

STATE PERSONNEL BOARD CALENDAR



JULY 7, 2004

SACRAMENTO

State of California

Memorandum

DATE: June 25, 2004

TO: ALL INTERESTED PARTIES

FROM: STATE PERSONNEL BOARD -- Appeals Division

SUBJECT: Notice and Agenda for the July 7, 2004, meeting of the State Personnel Board.

PLEASE TAKE NOTICE that on July 7, 2004, at the offices of the State Personnel Board, located at 801 Capitol Mall, Room 150, Sacramento, California, the State Personnel Board will hold its regularly scheduled meeting.

The attached Agenda provides a brief description of each item to be considered and lists the date and approximate time for discussion of the item.

Also noted is whether the item will be considered in closed or public session. Closed sessions are closed to members of the public. All discussions held in public sessions are open to those interested in attending. Interested members of the public who wish to address the Board on a public session item may request the opportunity to do so.

Should you wish to obtain a copy of any of the items considered in the public sessions for the July 7, 2004, meeting, please contact staff in the Secretariat's Office, State Personnel Board, 801 Capitol Mall, MS 22, Sacramento, CA 95814 or by calling (916) 653-0429 or TDD (916) 654-2360, or the Internet at:

<http://www.spb.ca.gov/calendar.htm>

Notice and Agenda
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June 25, 2004

Should you have any questions regarding this Notice and Agenda, please contact staff in the Secretariat's Office at the address or telephone numbers above.

TAMARA LACEY
Secretariat's Office

Attachment

CALIFORNIA STATE PERSONNEL BOARD MEETING*
801 Capitol Mall
Sacramento, California

Public Session Location - Room 150

Closed Session Location - Room 141

FULL BOARD MEETING AGENDA**

JULY 7, 2004

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

9:00 - 9:30

1. ROLL CALL
2. REPORT OF THE EXECUTIVE OFFICER

Report of Laura Aguilera
Interim Executive Officer
State Personnel Board
3. REPORT OF THE CHIEF COUNSEL
4. NEW BUSINESS
(Items may be raised by Board Members for scheduling and discussion at future meetings.)
5. REPORT ON LEGISLATION

* Sign Language Interpreter will be provided for Board Meeting upon request – contact Secretariat at (916) 653-0429, or CALNET 453-0429, TDD (916) 654-2360.

** The Agenda for the Board can be obtained at the following Internet address:
<http://www.spb.ca.gov/calendar.htm>

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July 7, 2004

- 9:30 - 10:00 6. ORAL ARGUMENT
 RONALD GALI, CASE NO. 03-0462A
 Appeal from dismissal
 Native American Spiritual leader
 California State Prison – Folsom

CLOSED SESSION OF THE STATE PERSONNEL BOARD

- 10:00 - 10:15 7. EMPLOYEE APPOINTMENTS, DISCIPLINARY MATTERS,
 AND OTHER APPEALS
 Deliberations to consider matter submitted at prior hearing.
 [Government Code Sections 11126(a), 18653.]

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

- 10:15 - 10:45 8. ORAL ARGUMENT
 ELIZABETH HERRERA, CASE NO. 03-2220A
 Appeal from medical termination
 Administrative Support coordinator I
 California State University – San Jose

CLOSED SESSION OF THE STATE PERSONNEL BOARD

- 10:45 - 12:00 9. EMPLOYEE APPOINTMENTS, DISCIPLINARY MATTERS,
 AND OTHER APPEALS
 Deliberations to consider matter submitted at prior hearing.
 [Government Code Sections 11126(a), 18653.]

- 12:00 - 1:00 LUNCH

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

- 1:00 - 2:00 10. HEARING – PROPOSED NEW AND REVISED STATE
 PERSONNEL BOARD REGULATIONS AFFECTING EQUAL
 OPPORTUNITY, DISCRIMINATION COMPLAINT AND
 REASONABLE ACCOMMODATION POLICIES AND
 PROCEDURES.

CLOSED SESSION OF THE STATE PERSONNEL BOARD

- 2:00 - 2:15 11. EMPLOYEE APPOINTMENTS, DISCIPLINARY MATTERS,
AND OTHER APPEALS
Deliberations to consider matter submitted at prior hearing.
[Government Code Sections 11126(a), 18653.]

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

- 2:15 - 2:45 12. HEARING – RESOLUTION TO ABOLISH TWO ELIGIBLE
LISTS CREATED BY THE CALIFORNIA DEPARTMENT OF
CORRECTIONS AND TO ALLOW EXISTING
APPOINTMENTS TO STAND.

CLOSED SESSION OF THE STATE PERSONNEL BOARD

- 2:45 - 13. DELIBERATION ON ADVERSE ACTION, DISCRIMINA-
TION COMPLAINT, AND OTHER PROPOSED DECISIONS
SUBMITTED BY ADMINISTRATIVE LAW JUDGES
Deliberations on matters submitted at prior hearing, on
proposed decisions, petitions for rehearing, rejected
decisions, remanded decisions, submitted decisions, and
other matters related to cases heard by administrative law
judges of the State Personnel Board or by the Board itself.
[Government Code Sections 11126(a), and 18653 (2).]

14. PENDING LITIGATION
Conference with legal counsel to confer with and receive
advice regarding pending litigation when discussion in open
session would be prejudicial. [Government Code Sections
11126 (e)(1), 18653.]

State Personnel Board (SPB) v. Department of Personnel
Administration (DPA)/ International Union of Operating
Engineers (IUOE et al. Sacramento County Superior Court
Case No. 01CS00109

Association of California State Attorneys and Administrative
Law Judges v. DPA/California Department of Forestry
Employees Association (ASKA) CDF Firefighters Court of
Appeal, Third district No. C034943
Sacramento County Superior Court No. 99CS03314)

IUOE v. SPB/Public Employee Relations Board (PERB)
Unfair Practice Case No. SA-CE-1295-S

Connerly v. SPB

15. RECOMMENDATIONS TO THE LEGISLATURE
Deliberations on recommendations to the Legislature.
[Government Code Section 18653.]
16. RECOMMENDATIONS TO THE GOVERNOR
Deliberations on recommendations to the Governor.
[Government Code Section 18653.]

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

On Adjournment:

17. DISCUSSION OF UPCOMING BOARD MEETING
SCHEDULE OF JULY 20, 2004, IN SACRAMENTO.

BOARD ACTIONS

18. ADOPTION OF THE STATE PERSONNEL BOARD
SUMMARY MINUTES OF JUNE 22, 2004.
19. ACTION ON SUBMITTED ITEMS
(See Agenda Page 21)
These items have been taken under submission by the State Personnel Board at a prior meeting and may be before the Board for a vote at this meeting. This list does not include evidentiary cases, as those cases are listed separately by category on this agenda under Evidentiary Cases.
20. EVIDENTIARY CASES
The Board Administrative Law Judges conducts Evidentiary hearings in appeals that include, but are not limited to, adverse actions, medical terminations, demotions,

discrimination, reasonable accommodations, and
whistleblower complaints.

A. BOARD CASES SUBMITTED

These cases have been taken under submission by the
State Personnel Board at a prior meeting and may be
before the Board for a vote at this meeting.

DORYANNA ANDERSON-JOHNSON, CASE NO. 00-
1687A

Appeal from denial of reasonable accommodation
Correctional Lieutenant
California Rehabilitation Center - Norco
Department of Corrections

ANDREW CIRNER, CASE NO. 03-2241EA

Appeal from denial of request for
reasonable accommodation
Senior Psychiatric Technician
Department of Mental Health

RICHARD COELHO, CASE NO. 02-1796R

Appeal from constructive medical termination
Fish and Game Warden
Department of Fish and Game

SHANNON FROEMING, CASE NO. 03-2871EA

Appeal from denial of request for reasonable
accommodation
Employment Program Representative
Employment Development Department

PAUL H. KEMP, Case No. 01-2841

Appeal from dismissal
Teacher Assistant - Youth Correctional
Reception Center and Clinic - Sacramento
Department of the Youth Authority

JENNIFER KILL, CASE NO. 02-2164B

Appeal for determination of back salary,
benefits and interest
Supervising Cook
California Correctional Institution - Tehachapi
Department of Corrections

RAY MARTINEZ, CASE NO. 03-3344
Appeal from dismissal
Correctional Officer
Substance Abuse Treatment Facility – Corcoran
Department of Corrections

MARGARET A. MEJIA, CASE NO. 03-1848
Appeal from dismissal
Psychiatric Technician (Safety)
Department of Mental Health

CHRISTOPHER MIRAMONTES, CASE NO. 03-2299
Appeal from five-percent reduction in
salary for six months
Special Agent
Department of Corrections

ALICE VAN-THU, CASE NO. 03-0413
Appeal from automatic resignation
Administrative Support Coordinator I
California State University – Monterey Bay

BEVERLY WILSON, CASE NO. 03-1150A
Appeal from dismissal
Administrative Support Assistant II
California State University - Carson

B. CASES PENDING

- Oral Arguments

These cases are on calendar to be argued at this meeting or to be considered by the Board in closed session based on written arguments submitted by the parties.

RONALD GALI, CASE NO. 03-0462A
Appeal from dismissal
Native American Spiritual leader
California State Prison – Folsom
Department of Corrections

ELIZABETH HERRERA, CASE NO. 03-2220A
Appeal from medical termination
Administrative Support coordinator I
California State University – San Jose

C. CHIEF COUNSEL RESOLUTIONS

NONE

- Court Remands
These cases have been remanded to the Board by the court for further Board action.

ROBERT HALL, CASE NO. 02-2027R
Appeal from dismissal
Correctional Officer
California State Prison – Solano
Department of Corrections

- Stipulations
These stipulations have been submitted to the Board for Board approval, pursuant to Government Code, section 18681.

NONE

D. ADMINISTRATIVE LAW JUDGE'S (ALJ) PROPOSED DECISIONS

- Proposed Decisions
These are ALJ proposed decisions submitted to the Board for the first time.

ISADORA ADLAWAN, CASE NO. 03-2895
Appeal for reinstatement after
automatic resignation
Administrative Analyst II
California State University - Monterey Bay

ANN R. ABIERAS, CASE NO. 04-0531
Appeal from ten-percent reduction
in salary for twelve months
Psychiatric Technician Assistant
Department of Developmental Services

WILLIAM ANDERSON, CASE NO. 03-3359
Appeal from constructive medical termination
Officer
California Highway Patrol

GREGORY BAKKER, CASE NO. 03-2953
Appeal from five-working-days suspension
and removal from specialty pay position
Officer
California Highway Patrol

JUDITH BISHOP, CASE NO. 03-2462E
Appeal from discrimination and
denial of reasonable accommodation
in the examination for Management Services
Technician
Department of Corrections - Sacramento

RONALD BORTMAN, M.D., CASE NO. 03-3022
Appeal from five-percent reduction in salary for six
months
Staff Psychiatrist (CF)
California State Prison - Crescent City
Department of Corrections

EVELYN B. CORPUS, CASE NO. 04-0529
Appeal from ten-percent reduction in
salary for twelve months
Psychiatric Technician Assistant
Department of Developmental Services

MICHAEL CORWIN, CASE NO. 03-2629
Appeal from five-working-days suspension
Psychiatric Social Worker
Department of Developmental Services

LISA FRANKLIN, CASE NO. 04-0190E
Appeal from denial of discrimination complaint
Legal Secretary
Department of Industrial Relations

NICHOLAS KEY, CASE NO. 04-0498
Appeal from dismissal
Correctional Officer
North Kern State Prison - Delano
Department of Corrections

SCOTT MACDONALD, CASE NO. 03-3386
Appeal from five-percent reduction in
salary for three pay periods
Fire Captain A
Department of Forestry and Fire

DEBRA TUCKER, CASE NO. 04-0367
Appeal from five-working-days suspension
Public Safety Dispatcher II
California Highway Patrol

- Proposed Decisions Taken Under Submission At Prior Meeting
These are ALJ proposed decisions taken under submission at a prior Board meeting, for lack of majority vote or other reason.

NONE

- Proposed Decisions After Board Remand

JACK BRON, CASE NO. 02-3688R
Appeal from constructive Medical Termination
Youth Correctional Officer
Department of the Youth Authority

- Proposed Decisions After SPB Arbitration

NONE

E. PETITIONS FOR REHEARING

- ALJ Proposed Decisions Adopted By The Board
The Board will vote to grant or deny a petition for rehearing filed by one or both parties, regarding a case already decided by the Board.

SANDRA CADENA, CASE NO. 03-2310P
Appeal from dismissal
Personnel Supervisor II
California State Prison – Sacramento
Department of Corrections
Petition for rehearing filed by appellant
to be granted or denied

STEVEN MARSHALL, CASE NO. 03-2393P
Appeal from demotion
Correctional Plant Supervisor – CF
California State Prison - Solano
Department of Corrections
Petition for rehearing filed by appellant
to be granted or denied

MONIQUE SIDAROSS, CASE NO. 03-2202P
Appeal from suspension
Transportation Engineer (Civil)
Department of Transportation
Petition for rehearing filed by appellant
to be granted or denied

VIRGIL WOODS, CASE NO. 98-2849P
Appeal from demotion
Correctional Counselor II/Specialist
California State Prison – Sacramento
Department of Corrections
Petition for rehearing filed by appellant
to be granted or denied

- Whistleblower Notice of Findings
The Board will vote to grant or deny a petition for rehearing filed by one or both parties, regarding a Notice of Findings issued by the Executive Officer under Government Code, section 19682 et seq. and Title 2, California Code of Regulations, section 56 et seq.

NONE

F. PENDING BOARD REVIEW

These cases are pending preparation of transcripts, briefs, or the setting of oral argument before the Board.

DONALD ATKINS, CASE NO. 03-1448P
Appeal from five-percent reduction
in salary for six months
Correctional Officer
California State Prison, San Quentin
Department of Corrections at San Quentin

TIMOTHY BOBITT, CASE NO. 02-2856
Appeal from suspension
Senior Special Agent in Charge
Department of Justice at Sacramento

NICHOLAS COMAITES, CASE NO. 03-0062
Appeal from official reprimand
Correctional Counselor II
Department of Corrections
AND

PAUL WARD, CASE NO. 03-0332
Appeal from official reprimand
Correctional Administrator
Department of Corrections

MICHELLE DAWKINS, CASE NO. 03-2755
Appeal from demotion
Fiscal Services Supervisor to Typist Clerk III
Human Services Agency, Merced County

RONALD GALI, CASE NO. 03-0462
Appeal from dismissal
Native American Spiritual Leader
Folsom State Prison - Represa
Department of Corrections

DEBRA GREENE, CASE NO. 03-0621
Appeal from non-punitive termination
Psychiatric Social Worker, Correctional Facility
Department of Corrections

MARTIN HERNANDEZ, CASE NO. 02-4449P
Appeal from demotion
Correctional Sergeant
Calipatria State Prison – Imperial
Department of Corrections

ELIZABETH HERRERA, CASE NO. 03-2220A
Appeal from constructive medical termination
Administrative Support Coordinator I
California State University – San Jose

MARY HUTTNER, CASE NO. 02-1690
Appeal from demotion
Staff Services Manager I to the
position of Associate Health Program
Advisor (top step)
Department of Health Services

CONNIE JAMES, CASE NO. 03-3136
Appeal from 15-working days'
suspension
Accounting Technician
Employment Development Department

CONNIE JOHNSON, CASE NO. 03-2620
Appeal from 30 calendar days suspension
Employment Program Representative
Employment Development Department

HUGO LANDEROS, CAE NO. 03-3190
Appeal from dismissal
Employment Program Representative

Employment Development Department

JACQUELYN McCARVER, CASE NO. 03-0669
Appeal from demotion
Correctional Sergeant
Rainbow Conservation Center - Fallbrook
Department of Corrections

MARGARET A. MEJIA, CASE NO. 03-1848
Appeal from dismissal
Psychiatric Technician (Safety)
Department of Mental Health

LEIJANE OGAWA, CASE NO. 03-2943E
Appeal from discrimination
Office Assistant (General)
Department of Transportation

MARYLAND PAGE, CASE NO. 03-3703
Appeal from five-percent reduction in
salary for twelve-months
Correctional Officer
Ironwood State Prison - Blythe
Department of Corrections

VIRGINIA PARKER, CASE NO. 03-0325
Appeal from demotion
Correctional Lieutenant
Ironwood State Prison – Blythe
Department of Corrections

KEVIN REDDINGTON, CASE NOS. 03-2646
& 03-0386P
Appeal from ten-percent reduction in salary
For six pay periods, and dismissal
Office Technician (Typing)
Department of Forestry and Fire Protection

KIM RITTENHOUSE, CASE NOS. 03-3541
& 03-3542E
Appeal from denial of reasonable accommodation
And from constructive medical termination
Office Technician (General)
Department of Fish and Game

PEARLIE BLEDSOE-TOWNES, CASE NO.
03-2966E
Appeal from denial of request for reasonable
Accommodation
Correctional Sergeant
Central California Women's Facility – Chowchilla
Department of Corrections

DENNIS UYEDA, CASE NO. 03-2396P
Appeal from five-working-days suspension
Latent Print Analyst II
Department of Justice

NANCY VALENTINO, Case No. 03-0699
Appeal from dismissal
Psychiatric Technician
Department of Developmental Services

GARY WHALEY, CASE NO. 03-1420E
Appeal from discrimination
Employment Program Representative
Employment Development Department

21. RESOLUTION EXTENDING TIME UNDER GOVERNMENT
CODE SECTION 18671.1 EXTENSION
(See Agenda Page 24)

22. NON-EVIDENTIARY CASES

- A. WITHHOLD APPEALS

- Cases heard by a Staff Hearing Officer, a managerial staff member of the State Personnel Board or investigated by Appeals Division staff. The Board will be presented recommendations by a Staff Hearing Officer or Appeals Division staff for final decision on each appeal.

BOYD BENNETT, CASE NO. 03-1514
Correctional Officer
Department of Corrections

SALVADOR CANALES, CASE NO. 03-1359
Correctional Officer
Department of Corrections

RICHARD COGHILL, CASE NO. 03-1521
Correctional Officer
Department of Corrections

KEVIN COOPER, CASE NO. 03-2286
Correctional Officer
Department of Corrections

GREGORY GAUB, CASE NO. 03-2172
Correctional Officer
Department of Corrections

ALVIN HALE, CASE NO. 03-2244
Accountant Trainee (LEAP)
State Personnel Board, Examination Services

ALVARO JIMENEZ, CASE NO. 03-1726
Cadet, CHP
California Highway Patrol

VICTOR MIRANDA, CASE NO. 03-2247
Correctional Officer
Department of Corrections

MATT MONTEZ, CASE NO. 03-2257
Correctional Officer
Department of Corrections

FREDERICK MONTGOMERY, CASE NOS. 03-2302
& 03-2303
Warehouse Worker (DOT), and Janitor (DGS)
Department of Transportation & Department of
General Services

JULIO NUNEZ, CASE NO. 03-1556
Correctional Officer
Department of Corrections

DAVID RAPHAEL, CASE NO. 03-2159
Youth Correctional Officer
California Youth Authority

MARIE REED, CASE NO. 03-0925
Correctional Officer
Department of Corrections

ROWENA REEVES, CASE NO. 03-2214
Correctional Officer
Department of Corrections

BENJAMIN RODRIGUEZ, CASE NO. 03-2073
Correctional Officer
Department of Corrections

RUBEN SANCHEZ, CASE NO. 03-1217
Correctional Officer
Department of Corrections

GENICE TENNANT, CASE NO. 03-2211
Youth Correctional Officer
Department of Youth Authority

DISMISSED CASES

SINH LOESCHER, CASE NO. 03-2184
Youth Correctional Officer
Department of Youth Authority

RODNEY MEADOR, CASE NO. 04-0752
Psychiatric Technician
Department of Mental Health

TINAH YEE, CASE NO. 03-2846
Criminal Intelligence Specialist I
Department of Justice

B. MEDICAL AND PSYCHOLOGICAL SCREENING
APPEALS - NONE

Cases heard by a Staff Hearing Panel comprised of a managerial staff member of the State Personnel Board and a medical professional. The Board will be presented recommendations by a Hearing Panel on each appeal.

C. EXAMINATION APPEALS - NONE
MINIMUM QUALIFICATIONS -NONE
MERIT ISSUE COMPLAINTS - NONE

Cases heard by a Staff Hearing Officer, a managerial staff member of the State Personnel Board or investigated by Appeals Division staff. The Board will be presented recommendations by a Staff Hearing Officer or Appeals Division staff for final decision on each appeal.

D. RULE 212 OUT-OF-CLASS APPEALS -NONE
VOIDED APPOINTMENT APPEALS -NONE
RULE 211 APPEALS -NONE

Cases heard by a Staff Hearing Officer, or a managerial staff member of the State Personnel Board. The Board will be presented recommendations by a Staff Hearing Officer for final decision on each appeal.

E. REQUEST TO FILE CHARGES CASES
PETITIONS FOR REHEARING CASES - NONE

Investigated by Appeals Division staff. The Board will be presented recommendations by Appeals Division staff for final decision on each request.

DON HANSEN, CASE NO. 03-2443
Project Manager
Department of General Services

F. PSYCHOLOGICAL SCREENING CASES - NONE

Cases reviewed by Appeals Division staff, but no hearing was held. It is anticipated that the Board will act on these proposals without a hearing.

23. NON-HEARING CALENDAR

The following proposals are made to the State Personnel Board by either the Board staff or Department of Personnel Administration staff. It is anticipated that the Board will act on these proposals without a hearing.

Anyone with concerns or opposition to any of these proposals should submit a written notice to the Executive Officer clearly stating the nature of the concern or opposition. Such notice should explain how the issue in dispute is a merit employment matter within the Board's scope of authority as set forth in the State Civil Service Act (Government Code Section 18500 et seq.) and Article VII, California Constitution. Matters within the Board's scope of authority include, but are not limited to, personnel selection, employee status, discrimination and affirmative action. Matters outside the Board's scope of authority include, but are not limited to, compensation, employee benefits, position allocation, and organization structure. Such notice must be received not later than close of business on the Wednesday before the Board meeting at which the proposal is scheduled. Such notice from an exclusive bargaining representative will not be entertained after this deadline, provided the representative has received advance notice of the classification proposal pursuant to the applicable memorandum of understanding. In investigating matters outlined above, the Executive Officer shall act as the Board's authorized representative and recommend the Board either

act on the proposals as submitted without a hearing or schedule the items for a hearing, including a staff recommendation on resolution of the merit issues in dispute.

A. EQUIPMENT ENGINEER

The Department of Transportation (CalTRANS) and DPA propose to establish the deep class of Equipment Engineer and minor revisions to the existing class, Senior Equipment Engineer. The proposed Equipment Engineer classification will have Alternate Ranges A through C, similar to other engineering deep classes in State Services with registration as a mechanical, electrical, civil, agricultural, manufacturing or structural engineering requirement at Range D, and a 12 month probationary period. In addition, CalTRANS proposes to footnote 24 the existing class of Associate Engineer. The Senior Equipment Engineer class specification will have minor revisions updating the language utilized in the knowledge and abilities section, and the minimum qualifications will be revised to include the newly established deep class Equipment Engineer.

24. STAFF CALENDAR ITEMS FOR BOARD INFORMATION

NONE

25. CAREER EXECUTIVE ASSIGNMENT (CEA) CATEGORY
ACTIVITY

This section of the Agenda serves to inform interested individuals and departments of proposed and approved CEA position actions.

The first section lists position actions that have been proposed and are currently under consideration.

Any parties having concerns with the merits of a proposed CEA position action should submit their concerns in writing to the Classification and Compensation Division of the Department of Personnel Administration, the Personnel Resources and Innovation Division of the State Personnel Board, and the department proposing the action.

To assure adequate time to consider objections to a CEA position action, issues should be presented immediately upon receipt of the State Personnel Board Agenda in which the proposed position action is noticed as being under consideration, and generally no later than a week to ten days after its publication.

In cases where a merit issue has been raised regarding a proposed CEA position action and the dispute cannot be resolved, a hearing before the five-member Board may be scheduled. If no merit issues are raised regarding a proposed CEA position action, and it is approved by the State Personnel Board, the action becomes effective without further action by the Board. The second section of this portion of the Agenda reports those position actions that have been approved. They are effective as of the date they were approved by the Executive Officer of the State Personnel Board.

A. REQUESTS TO ESTABLISH NEW CEA POSITIONS
CURRENTLY UNDER CONSIDERATION

- (1) CHIEF DEPUTY DIRECTOR, OPERATIONS
The Department of Motor Vehicles is requesting to allocate the above position to the CEA category. The Chief Deputy Director, Operations assists the director in formulating and implementing policy regarding current operational matters and advising the director on efforts to ensure effective and efficient delivery of existing service.
- (2) DIVISION CHIEF, CODES & STANDARDS
The Division of the State Architect is requesting to allocate the above position to the CEA category. The Division Chief, Codes and Standards is responsible for establishing design and construction policy and regulations, which includes k-12 public schools, community colleges and state essential services buildings.
- (3) DIVISION CHIEF, OPERATIONS
The Division of the State Architect is requesting to allocate the above position to the CEA category. The Division Chief, Operations develops and establishes policy and guidelines governing DSA Operations programs.

B. EXECUTIVE OFFICER DECISIONS REGARDING
REQUESTS TO ESTABLISH NEW CEA POSITIONS

NONE

26. WRITTEN STAFF REPORT FOR BOARD INFORMATION

A. ANNUAL CENSUS REPORT OF EMPLOYEES IN THE
STATE CIVIL SERVICE, 2002 – 2003 FISCAL YEAR.

27. PRESENTATION OF EMERGENCY ITEMS AS
NECESSARY

A D J O U R N M E N T

SUBMITTED

1. TEACHER STATE HOSPITAL (SEVERELY), ETC. Departments of Mental Health and Developmental Services. (Hearing held December 3, 2002).
2. VOCATIONAL INSTRUCTOR (SAFETY)(VARIOUS SPECIALTIES). Departments of Mental Health and Developmental Services. (Hearing held December 3, 2002).
3. TELEVISION SPECIALIST (SAFETY)
The Department of Corrections proposes to establish the new classification Television Specialist (Safety) by using the existing Television Specialist class specification and adding “Safety” as a parenthetical to recognize the public aspect of their job, additional language will be added to the Typical Tasks section of the class specification and a Special Physical Characteristics section will be added. (Presented to Board March 4, 2003).

NOTICE OF GOVERNMENT CODE § 18671.1 RESOLUTION

Since Government Code section 18671.1 requires that cases pending before State Personnel Board Administrative Law Judges (ALJ's) be completed within six months or no later than 90 days after submission of a case, whichever is first, absent the publication of substantial reasons for needing an additional 45 days, the Board hereby publishes its substantial reasons for the need for the 45-day extension for some of the cases now pending before it for decision.

An additional 45 days may be required in cases that require multiple days of hearings, that have been delayed by unusual circumstances, or that involve any delay generated by either party (including, but not limited to, submission of written briefs, requests for settlement conferences, continuances, discovery disputes, pre-hearing motions). In such cases, six months may be inadequate for the ALJ to hear the entire case, prepare a proposed decision containing the detailed factual and legal analysis required by law, and for the State Personnel Board to review the decision and adopt, modify or reject the proposed decision within the time limitations of the statute.

Therefore, at its next meeting, the Board will issue the attached resolution extending the time limitation by 45 days for all cases that meet the above criteria, and that have been before the Board for less than six months as of the date of the Board meeting.

GOVERNMENT CODE § 18671.1 RESOLUTION

WHEREAS, Section 18671.1 provides that, absent waiver by the appellant, the time period in which the Board must render its decision on a petition pending before it shall not exceed six months from the date the petition was filed or 90 days from the date of submission; and

WHEREAS, Section 18671.1 also provides for an extension of the time limitations by 45 additional days if the Board publishes substantial reasons for the need for the extension in its calendar prior to the conclusion of the six-month period; and

WHEREAS, the Agenda for the instant Board meeting included an item titled "Notice of Government Code § 18671.1 Resolution" which sets forth substantial reasons for utilizing that 45-day extension to extend the time to decide particular cases pending before the Board;

WHEREAS, there are currently pending before the Board cases that have required multiple days of hearing and/or that have been delayed by unusual circumstances or by acts or omissions of the parties themselves;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the time limitations set forth in Government Code section 18671.1 are hereby extended an additional 45 days for all cases that have required multiple days of hearing or that have been delayed by acts or omissions of the parties or by unusual circumstances and that have been pending before the Board for less than six months as of the date this resolution is adopted.

* * * * *



(Cal 7/7/04)

TO: Members
State Personnel Board

FROM: State Personnel Board - Legislative Office

SUBJECT: LEGISLATION

There is no written legislative report at this time. I will give a verbal presentation on any legislative action that has taken place that will be of interest to the Board.

Please contact me directly should you have any questions or comments regarding any bills in which you may have an interest. I can be reached at (916) 653-0453.

Sherry Hicks
Director of Legislation

TO: STATE PERSONNEL BOARD

FROM: F.THEODORE EDWARDS, Manager
Office of Civil Rights

REVIEWED BY: KAREN COFFEE, Chief
Merit Employment and Technical Resources Division

SUBJECT: PROPOSED NEW AND REVISED STATE PERSONNEL BOARD
REGULATIONS AFFECTING EQUAL EMPLOYMENT
OPPORTUNITY, DISCRIMINATION COMPLAINT AND
REASONABLE ACCOMMODATION POLICIES AND
PROCEDURES

REASON FOR HEARING AND DISCUSSION:

The hearing has been scheduled to consider 22 new and two amended State Personnel Board (SPB) regulations to update, clarify and expand equal employment opportunity, discrimination complaint and reasonable accommodation policies and procedures, and to repeal five existing regulations that have been incorporated into the proposed new regulations. The proposal affects regulations included under California Code of Regulations (CCR) Title 2, Division 1, Chapter 1, Sub-chapter 1, General Civil Service Regulations and Sub-chapter 1.7, Equal Employment Opportunity Program. The full text and a discussion of the proposed new and amended regulations is contained in the attached memorandum. Proposed new and amended regulations have been reviewed with the California Civil Rights Officer Council (CCROC), participating departments, and the California State Employees' Association (CSEA). Input received was given full consideration and has resulted in modifications to the proposed regulations. This hearing will provide interested parties additional opportunity for input regarding the proposed regulations.

RECOMMENDATION:

That the following resolution be adopted:

WHEREAS, the U.S. Civil Rights Act of 1964, the federal Americans with Disabilities Act of 1990, the California Fair Employment and Housing Act and the State Civil Service Act prohibit employment discrimination within the state civil service based on political affiliation, race, color, sex, religious creed, national origin, ancestry, marital status, age, sexual orientation, disability, political or religious opinions or non-job-related factors and require the provision of equal employment opportunity; and

WHEREAS, Article VII, Section 3 of the California Constitution requires the board to enforce the civil service statutes and adopt rules authorized by statute; and

Proposed New and Revised State Personnel Board Regulations Affecting Equal Employment Opportunity and Discrimination Complaint Policies and Procedures
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WHEREAS, Government Code Section 18701 authorizes the board to prescribe, amend, and repeal rules for the administration and enforcement of the State Civil Service Act; and

WHEREAS, Government Code Sections 19230 and 19232 declare that it is the policy of the state that qualified individuals with disabilities be employed in the state service on the same terms and conditions as the non-disabled, unless it is shown that a particular disability is job-related, and that it is the policy of the state to make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee with a disability, unless it would cause the state agency undue hardship, and authorize state agencies to establish annual employment goals and timetables pursuant to guidelines established by the State Personnel Board; and

WHEREAS, Government Code Sections 19240 and 19241 declare that the State Personnel Board shall be responsible for the Limited Examination and Appointment Program (LEAP), that the program shall provide an alternative to the traditional civil service selection process to facilitate hiring of persons with disabilities in the state civil service, and that the board shall establish rules and procedures for implementation; and

WHEREAS, Government Code Sections 19702 declares that a person shall not be discriminated against because of sex, race, religious creed, color, national origin, ancestry, marital status, physical disability, or mental disability and that any person claiming discrimination within the state civil service may submit a complaint to the appointing authority, or, in accordance with board rule, the board itself; and

WHEREAS, Government Code Sections 19792 authorizes the board to provide statewide leadership in the state civil service and to develop, implement, and maintain equal employment opportunity guidelines; and

WHEREAS, amendments, additions and deletions to State Personnel Board regulations are needed to update and clarify state equal employment opportunity, discrimination complaint and reasonable accommodation policies and procedures as the result of new case law, new statutory requirements, and recommendations from a board study on the status of the state's discrimination complaint and reasonable accommodation processes, therefore be it

RESOLVED, That proposed new Regulations 547.58, 547.79, 547.801-547.8191, as they appear in this calendar, be adopted by the board; and be it further

RESOLVED, That proposed amended Regulations 10, 547.80, as they appear in this calendar, be adopted by the board; and be it further

RESOLVED, that existing Regulations 53.2, 54, 54.2, 547, and 547.1 be repealed by the board.

**NOTICE OF PROPOSED REVISION OF REGULATIONS AND
STATEMENT OF REASONS**

**California Code of Regulations
Title 2. Administration
Division 1. Administrative Personnel
Chapter 1. State Personnel Board**

DATE: May 21, 2004

TO: ALL STATE AGENCIES, EMPLOYEE ORGANIZATIONS, AND
MEMBERS OF THE GOVERNOR'S CABINET

**SUBJECT: PROPOSED AMENDMENT, ADOPTION AND REPEAL OF
STATE PERSONNEL BOARD REGULATIONS AFFECTING
EQUAL EMPLOYMENT OPPORTUNITY AND DISCRIMINATION
COMPLAINT POLICIES AND PROCEDURES**

AUTHORITY:

Under the authority established in Government Code § 18701, the State Personnel Board (SPB) proposes to amend, adopt, and repeal sections of Title 2, Division 1 of the California Code of Regulations relating to Equal Employment Opportunity and Discrimination as outlined in this notice.

REFERENCE:

These regulations implement, interpret, and/or make specific Government Code §§ 11092, 11092.5, 11139.6, 12926, 12926.1, 12940 -12951, 18500(c)(5), 18523, 18675, 18952, 18701, 19230 -19237, 19240 -19244, 19241, 19700 -19706, and 19790 -19799.

PUBLIC HEARING:

Date and Time: July 7, 2004
1:00 to 2:00 pm.

Place: 801 Capitol Mall
Sacramento, CA 95814

Purpose: To receive written or oral comments about this action.

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WRITTEN PUBLIC COMMENT PERIOD:

The written public comment period will close Monday, July 5, 2004, at 5:00 p.m. This comment period allows time for SPB staff to provide copies of any written comments to the five-member State Personnel Board (Board) for their consideration at the time of the hearing. Any person may submit written comments about the proposed regulatory changes at the hearing. To be considered by the Board, the appropriate person identified below must receive written comments before the close of the forty-five (45) day comment period.

Direct written comments may be submitted to Ted Edwards at the State Personnel Board, 801 Capitol Mall, MS 12, Sacramento, CA 95814, or to tedwards@spb.ca.gov, or fax comments to his attention at (916) 651-9016.

**AVAILABILITY OF PROPOSED TEXT AND STATEMENT OF REASONS/
CONTACT PERSONS:**

Copies of the express terms of each proposed action, Statement of Reasons, and all of the information upon which each proposal is based are available upon request from SPB's contact person. The Rulemaking Files and related documents are available for review during normal business hours at the State Personnel Board, 801 Capitol Mall, Sacramento, CA 95814. Additional information or questions regarding the substance of the proposed actions should be directed to Ted Edwards as specified above. Questions regarding the regulatory process in conjunction with these proposals should be directed to Elizabeth Montoya, the backup contact person, at the State Personnel Board, (916) 654-0842 or TDD (916) 653-1498.

AVAILABILITY OF CHANGES TO PROPOSED TEXT:

If any substantial and sufficiently related changes are made to the text of either proposal as a result of comments received during the public comment period, SPB will make the full text of the changed regulation(s) available for at least fifteen (15) days before the date the regulation(s) is permanently adopted.

DOCUMENTS RELIED UPON

Americans with Disabilities Act of 1990 (Public Law 101-336)

Title VII of the Civil Rights Act of 1964, 42 USC, Sections 2000e-2 Et seq.

"Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity", Federal Register, October 30, 1997

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“Report on the Status of the State Discrimination Complaint Process”, prepared by Office of Civil Rights, State Personnel Board, February 2002

Connerly v. State Personnel Bd. (2001) 92 Cal. App. 4th 16, hereafter referred to as Connerly v. SPB

Hazelwood School District et al., v. United States, 433 U.S. 299, (1972), hereafter referred to as Hazelwood v. U.S.

Johnson v. Santa Clara Transportation Agency, 480 U.S. 616 (1987), hereafter referred to as Johnson v. Santa Clara

Wards Cove Packing Co. v. Atonio, 490 U.S. 642 (1989), hereafter referred to as Wards Cove v. Atonio

Wygant v. Jackson Board of Education, 476 U.S. 267 (1986), hereafter referred to as Wygant v. Jackson

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

Government Code §§ 11092 and 11092.5 require each State agency to maintain statistical tabulations for the racial categories of Filipino and Pacific Islanders.

Government Code § 11139.6 prohibits State and local government agencies from discriminating against or granting preferential treatment to any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, education or contracting.

Government Code §§ 12926 and 12926.1 enumerate the terms and definitions used by the Department of Fair Employment and Housing (DFEH) in connection with unlawful employment and housing practices, which may be broader than those required by the federal Americans with Disabilities Act.

Government Code §§ 12940 Et seq. prohibits unlawful employment practices, unless based upon a bonafide occupational qualification, or except where based upon applicable security regulations established by the United States or the State of California. These provisions prohibit discrimination because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation of any person in connection with employment or employment privileges such as training and compensation.

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Government Code § 18500(c)(5) provides that the State civil service personnel system shall treat applicants and employees equitably and without regard to political affiliation, race, color, sex, religious creed, national origin, ancestry, marital status, age, sexual orientation, disability, political or religious opinion or non job-related factors.

Government Code § 18523 defines class as a group of positions sufficiently similar with respect to duties and responsibilities that the same title may be used for them, the same test of fitness may be used, and the same minimum qualifications may be required and the same schedule of compensation may be applied.

Government Code § 18675 authorizes SPB to investigate or hear a complaint of discrimination, harassment, or retaliation of a State employee, and, upon consideration of applicable current laws and decisions, arrive at a decision.

Government Code § 18952 specifies that an employee may appeal to the Board in writing if she/he feels aggrieved at any action by a superior or fellow employee that discouraged, or in any manner hindered or prevented him/her from taking an examination. SPB is authorized to investigate such an appeal and take action as necessary.

Government Code § 18701 authorizes the Board to prescribe, amend, and repeal regulations for the administration and enforcement of the Civil Service Act (Government Code §§ 18500 et seq.).

Government Code §§ 19230 Et seq. enumerates the State's policies and requirements related to the employment of qualified individuals with a disability and provides reasonable accommodation to known physical or mental limitations. Government Code § 19231 defines the meaning of terms used in connection with these policies. Government Code § 19232 requires State agencies to establish an affirmative action program to ensure individuals with a disability access to positions on an equal and competitive basis with the general population, which includes setting goals and timetables. Government Code § 19233 provides the Board authority to outline specific actions to improve representation of persons with disability, to ensure equal and fair employment practices, and to survey by job category and salary so as to establish guidelines and goals and timetables.

Government Code §§ 19240 Et seq. provides SPB responsibility for the Limited Examination and Appointment Program (LEAP), an alternative examination and appointment method that facilitates the hire of persons with disabilities in State

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civil service positions where accommodations can be provided and prohibitive physical requirements are not mandated. These sections establish the parameters and requirements of the LEAP.

Government Code § 19241 authorizes the Board to establish rules and procedures for the implementation of the Limited Examination and Appointment Program (LEAP), including the establishment of eligibility criteria for participation, special job classifications, examination techniques, and appointment and appeals procedures.

Government Code §§ 19700 Et seq. prohibits discrimination in State civil service of any person because of sex, race, religious creed, color, national origin, ancestry, marital status, physical or mental disability, or age, and the retaliation of any person who has opposed any unlawful employment practice. Discrimination includes harassment. These provisions specify that an individual may submit a discrimination complaint with the appointing authority or, in accordance with Board rules, with the Board itself, and authorizes SPB to investigate and conduct hearings concerning such complaints and take action upon a finding of discrimination. In addition, these provisions require that hiring and promotions in the civil service conform to the Federal Civil Rights Act of 1964. Title VII of the Act prohibits practices, procedures or policies that have an adverse impact on employees or applicants for employment unless they are justified by business necessity. It also prescribes practices which “tend to deprive” a person of equal employment opportunity, such as preferential treatment for one group of persons over another.

Government Code §§ 19790 Et seq. enumerates the requirements of the State civil service Affirmative Action (AA) Program and delineates SPB’s responsibility for providing statewide advocacy, coordination, enforcement and monitoring of these programs, including the development, implementation, and maintenance of AA and equal employment opportunity guidelines, and the maintenance of statistical information to determine the underutilization of minorities and women. These provisions require each agency to develop an AA plan that includes identification of areas of underutilization for protected groups, an equal employment opportunity analysis, and an explanation of and specific actions for improving the representation of protected groups. Lastly, these provisions require State agencies to establish an effective AA program, including the appointment an affirmative action officer to develop, implement, coordinate, and monitor this program.

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The U.S. Supreme Court has affirmed in several cases that a public employer may employ affirmative action plans, which provide for race or gender preferences where essential to remedy the past effects of discriminatory employment practices, Johnson v. Santa Clara and Wygant v. Jackson. Such actions for public employers, such as the State of California, must meet requirements of both Title VII of the Civil Rights Act of 1964 and the Equal Protection clause of the 14th Amendment to the United States Constitution.

The U.S. Supreme Court held in Hazelwood v. U.S. [433 U.S. 299 (1977)] that gross statistical disparities between the composition of the employer's work force and that of the relevant labor force constitutes a prima facie case of a pattern or practice of employment discrimination under Title VII of the Civil Rights Act of 1964. The court held that once a prima facie case was established by statistical work force disparities, the burden shifts to the employer to articulate some legitimate, nondiscriminatory reason for its action. In addition, Wards v. Atonio, 490 U.S. 642 (1989) emphasizes the importance of making relevant labor force comparison and developing appropriate statistical evidence to establish a prima facie case of discrimination.

In 2001, the California Third District Court of Appeal issued a published decision in Connerly v. SPB, which concluded that establishing employment goals based on race or gender violates principles of equal protection as well as the California Constitution as amended by Proposition 209. The court, however, upheld those statutory provisions that require the collection of statistical data and reporting of underutilization by racial or gender categories in State agencies to monitor employment practices and, under limited circumstances, upheld the provision permitting the SPB to adjust layoff based on a finding of past discrimination.

The proposed regulatory changes respond to: 1) the findings of court decisions and enacted legislation concerning equal employment opportunity programs for State agencies; and 2) the need to improve the discrimination complaint and reasonable accommodation processes. In addition, new regulation is being proposed to establish a Coordinator for each State agency to facilitate the use of LEAP and the hire of persons with disabilities in civil service. The following summarizes the proposed changes:

CCR § 10. Disability Terms- Proposed Amendment to the Regulation

In 2000, AB 2222 (Kuehl/Chapter 1049, Statutes of 2000) amended the State Fair Employment and Housing Act (FEHA) to expand the definition of a person with a disability beyond the definition provided in the federal Americans with

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Disabilities Act (ADA) for non-discrimination law enforcement purposes. Under FEHA, a person must have an impairment that “limits” a major life activity, rather than one that “substantially limits” as required under the ADA. In addition, under FEHA, disability determinations are made without regard to mitigating measures, such as glasses, prosthetic devices, and medication. Under the ADA, determinations are made with consideration of mitigating measures. In addition, FEHA specifies that an individual with certain medical conditions is disabled. Accordingly, it is necessary for SPB to adopt the new more liberal definition for use in collecting statistical information on State employees, setting employment goals, and adjudicating discrimination complaints and reasonable accommodation appeals. The proposed revised Regulation 10 adopts the FEHA’s definitions of disability terms.

CCR § 547.58 - Proposed New LEAP Regulation

The Limited Examination and Appointment Program (LEAP) became a permanent special State program to facilitate the employment of persons with disabilities in 1989. A new CCR § 547.58 is proposed to add the requirement that each State department have a LEAP Coordinator to promote use of the program and assist managers and LEAP candidates throughout the hiring and evaluation processes to resolve any problems that may occur. This is important to help ensure that persons with disabilities receive equal employment opportunity within each department.

Proposed Regulations Regarding the State’s Discrimination Complaint and Reasonable Accommodation Processes

The following proposed regulation changes are discussed below as a group because they are the result of a common effort to improve State equal employment opportunity and non-discrimination processes:

CCR §§ 53.2, 54, 54.2, 547, and 547.1 – Proposed Repeal of Current Regulations on State Discrimination Complaint and Reasonable Accommodation Procedures and Corresponding Procedures for Appeals to the SPB;

CCR §§ 547.807 - 547.815 - Proposed New Regulations on State Discrimination Complaint Processes and Appeal Procedures; and

CCR §§ 547.816 - 547.8191 – Proposed New Regulations Regarding State Reasonable Accommodation Processes and Appeal Procedures

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In March 2002, following completion of a comprehensive study to evaluate the status of the State's discrimination complaint process, SPB held a public hearing to consider recommendations for improving the process. Many of the recommendations that were adopted involved amending existing regulations and promulgating new regulations to clarify and expand departmental discrimination complaint and reasonable accommodation policies and procedures, and SPB appeal requirements. To implement these recommendations, SPB proposes a new Article 3, Discrimination Complaint Process, CCR §§ 547.807 - 547.815, and a new Article 4, Reasonable Accommodation, CCR §§ 547.816 - 547.819. It is also proposed that current SPB CCR §§ 53.2, 54, 54.2, 547 and 547.1 be repealed, since the proposed new regulations incorporate and expand upon their provisions.

CCR §§ 547.79 - 547.803 - Proposed New and Amended Regulations on Equal Employment Opportunity Policy and the Workforce Analysis Process

In 2001, the California Court of Appeal in Connerly v. SPB held that statutes requiring State departments to set employment goals based on race or sex were in violation of the California Constitution, as amended by Proposition 209. Subsequently, SPB eliminated the requirements for annually setting employment goals for racial/ethnic groups and women and revised the annual State workforce analysis process. The focus of the revised process is on determining the extent to which State departments are providing equal employment opportunity and have non-discriminatory employment practices. This involves identifying underutilization of racial/ethnic and gender groups in occupational categories as an indication of possible employment discrimination, conducting follow up analysis to determine the cause of the underutilization, and developing an action plan to correct or eliminate any non job-related employment barriers. The new and revised regulations are proposed to formally define the State civil service equal employment opportunity policy and terminology, and to provide policy and procedural guidance to State departments for completing the annual workforce analysis process.

CCR §§ 547.804 - 547.806 - Proposed New Regulations for Establishing Employment Goals for Persons with Disabilities and Updating Disability Information for State Employees

Employment goals for persons with disabilities are not affected by the Connerly v. SPB decision and continue to be mandated by Government Code § 19232. In 1995, the Board held a public hearing to consider proposed methodology for establishing employment goals for persons with disabilities.

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After considering all input, the Board approved staff recommendations, and guidelines were issued to departments for annually reviewing their representation of employees with disabilities and establishing a departmental employment goal. Currently, these guidelines are included as an appendix at the back of SPB's *Interim Guidelines for Conducting the Annual State Workforce Analysis* (Interim Guidelines). The proposed new Article 2, Employment Goals for Persons with Disabilities, CCR §§ 547.804 - 547.806 will separate procedural guidelines for setting employment goals for persons with disabilities from the other annual workforce analysis guidelines for racial/ethnic and gender groups to better recognize significant differences in analytical methodology, and to give greater recognition and visibility to the requirements for providing equal employment opportunity for persons with disabilities in the State civil service.

IMPACT ON SMALL BUSINESSES:

The proposed regulations will not impact small businesses. The proposed actions would affect only State and applicable local agencies and their employees.

LOCAL MANDATE:

The proposal has no mandate upon local agencies or school districts and therefore requires no reimbursement pursuant to Government Code § 17561.

COST ESTIMATES OF PROPOSED ACTION:

Costs or Saving to State Agencies

Any additional cost that the proposed amendment may cause for State and applicable local agencies will be negligible.

Impact on Housing Costs

The proposal will not affect housing costs.

Costs or Savings in Federal Funding to the State

No impact.

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

The proposal does not impose nondiscretionary costs or savings on local agencies.

Cost Impact on Representative Private Persons or Businesses

SPB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed actions.

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ASSESSMENT OF POTENTIAL ADVERSE ECONOMIC IMPACT ON BUSINESS:

SPB has determined that the proposed actions will have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

ASSESSMENT REGARDING THE EFFECT ON JOBS OR BUSINESSES:

The proposed actions will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

ALTERNATIVES STATEMENT:

The Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FINAL STATEMENT OF REASONS:

Upon completion, copies of the Final Statement of Reasons for the proposed actions may be obtained from the contact person or the backup contact person.

ACCESSING INFORMATION REGARDING THIS RULEMAKING FILE ON THE STATE PERSONNEL BOARD WEBSITE:

The text of each proposed regulation in underline and strikeout, as well as, the Notice of Proposed Amendment of Regulations, and Statement of Reasons and if prepared and when available for review, the Final Statement of Reasons, will be on SPB's Web site at www.spb.ca.gov.

STATEMENT OF REASONS:

The Board by its authority to promulgate rule under Government Code § 18701 proposes to adopt 22 new and 2 amended State Personnel Board (SPB) regulations to update, clarify and expand equal employment opportunity, discrimination complaint and reasonable accommodation policies and procedures, and to repeal five existing regulations that have been incorporated into the proposed new regulations. The proposal affects regulations included under California Code of Regulations (CCR) Title 2, Division 1, Chapter 1, Subchapter 1, General Civil Service Regulations and Sub-chapter 1.7, Equal Employment Opportunity Program. The proposed actions are taken to comply with current State statutory, constitutional and case law requirements concerning

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equal employment opportunity and non-discrimination, including workforce data collection and evaluation of equal employment opportunity activities within State civil service. The proposed regulatory actions make specific reasonable accommodation, LEAP and discrimination complaint requirements, practices and procedures.

Joan Allison, Acting Chief,
Policy Division

Attachment: Text of Proposed Regulations

TITLE 2. ADMINISTRATION
Division 1. Administrative Personnel
Chapter 1. State Personnel Board
Subchapter 1. General Civil Service Regulations

Article 1. Definitions

§ 10. Disability Terms.

(a) ~~“Individual with a disability” means, with respect to an individual (1) having a physical or mental impairment that substantially limits one or more major life activities of such individual; (2) having a record of such impairment; or (3) being regarded as having such an impairment.~~

(b) ~~“Physical Impairment” means any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin and endocrine.~~

(c) ~~“Mental Impairment” means any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.~~

(d) ~~“Major life activities” mean activities that an average person can perform with little or no difficulty, such as walking, speaking, breathing, performing manual tasks, seeing, hearing, learning, caring for oneself, working, sitting, standing, lifting, or reaching, etc.~~

(e) ~~“Substantially Limits” means the individual with the disability is: 1) unable to perform a major life activity that the average person in the general population can perform; or 2) significantly restricted as to the condition, manner or duration under which the average person in the general population can perform that same major life activity.~~

NOTE: Authority cited: Sections 18701, 19231, 19241, and 19792, Government Code. Reference: Sections 19230, 19231, and 19240-44, Government Code; and Federal Public Health and Welfare Code, Title 42, Chapter 126, Sections 12101-12117 (Americans with Disabilities Act of 1990 [ADA]).

(a) As used in this chapter, the terms “physical disability,” “mental disability,” “medical condition,” “limits,” “major life activities,” “reasonable accommodation,” and “undue hardship” have the definitions set forth in Government Code § 12926.

(b) As used in this chapter, an “individual with a disability” means any individual with a physical or mental disability.

(c) Notwithstanding subdivision (a), if the definition of “disability” used in the federal Americans with Disabilities Act of 1990 (Public Law 101-336) would result in broader protection of the civil rights of an individual with a mental or physical disability, or would include any medical condition not included in Government Code § 12926, then that broader protection or coverage shall be deemed incorporated by reference into the definitions set forth in this section.

NOTE: Authority cited: Section 18701, Government Code.

Reference: Sections 12926, 12940, 19230-19237, and 19240-19244, Government Code and Federal Public Health and Welfare Code, Title 42, Chapter 126, Sections 12101-12117 (Americans with Disabilities Act of 1990 [ADA]).

TITLE 2. ADMINISTRATION
Division 1. Administrative Personnel
Chapter 1. State Personnel Board
Subchapter 1. General Civil Service Regulations

~~Article 25. Discrimination~~

~~§ 547. Discrimination Prohibition.~~

~~Discrimination in violation of state or federal law shall be prohibited in State employment. All issues relating to alleged violation of Federal or State anti-discrimination laws shall be resolved using the appeal process provided in Sections 54 to 54.23 inclusive.~~

~~NOTE: Authority: Section 18701, Government Code.~~

~~Reference: Sections 19700, 19701, 19702, 19702.1, 19702.2, 19702.5, 19703, 19704 and 19705, Government Code.~~

*(Provisions in this rule have been incorporated into revised
CCR § 54 and proposed new CCR§ 547.79)*

~~§ 547.1. Procedures for Resolving Discrimination Complaints.~~

~~A complaint against an action, decision, policy or condition which is within the authority of the appointing power to resolve shall be first considered by the appointing power before referral to the Personnel Board. A complaint of discrimination which cannot be resolved by the appointing power, or which is not within the authority of the appointing power to resolve shall be filed with the Personnel Board as an appeal. The executive officer may first attempt to resolve such a complaint informally, or refer it to the board for hearing. Complaints which do not allege discrimination as set forth in Section 547 shall be dealt with through the grievance procedure, if applicable, or filed as an appeal to the board.~~

~~Each complaint must be in writing and state clearly the facts upon which it is based, and the relief requested, in sufficient detail for the reviewing authority to understand the nature of the complaint and who is involved.~~

~~Each appointing power may establish a written procedure through which an employee may obtain consideration for an allegation of discrimination. All such procedures are subject to the approval of the executive officer. Until the appointing power establishes an approved procedure, the standard procedure prescribed by the executive officer shall apply.~~

*(Provisions of this rule have been incorporated into revised
CCR § 54, and proposed new CCR §§ 547.809 and 547.812)*

TITLE 2. ADMINISTRATION
Division 1. Administrative Personnel
Chapter1. State Personnel Board
Subchapter 1. General Civil Service Regulations

Article 28. Limited Examination and Appointment Program

§ 547.58. LEAP Coordinator.

Each appointing power shall assign an employee to serve as a departmental LEAP coordinator to facilitate use of the program within the department. The duties of the coordinator shall include, but not be limited to, the following:

- (a) Promote and encourage use of LEAP within the department;
- (b) Act as a central contact within a department for information about LEAP and the hiring process;
- (c) Monitor LEAP appointments within a department to ensure that the process is working effectively;
- (d) Coordinate the processing of LEAP documentation to the board;
- (e) Assist departmental managers and supervisors with LEAP matters;
- (f) Act as the departmental liaison with the board regarding LEAP; and
- (g) Serve as a resource for LEAP candidates and appointees.

NOTE: Authority cited: Sections 18701 and 19241, Government Code.
Reference: Sections 19240-19244, Government Code.

TITLE 2. ADMINISTRATION
Division 1. Administrative Personnel
Chapter 1. State Personnel Board
Subchapter 1.7 Equal Employment Opportunity Program

Article 1. ~~State Work Force~~ Equal Employment Opportunity Policy,
Data Collection and Evaluation

§ 547.79. Diversity, Equal Employment Opportunity, and Non-Discrimination.

It is state civil service policy to promote diversity in the workforce by providing equal employment opportunity to all job applicants and employees based on merit and to prohibit unlawful discrimination in every aspect of personnel policies and employment practices, including recruitment, examining, hiring, promotion, training, work assignments, work environment, and other terms, conditions or privileges of employment. State agencies and departments shall ensure that this policy is fully implemented and that no unlawful discrimination or retaliation is taken against applicants and employees for exercising their rights under this policy.

NOTE: Authority cited: Section 18701, Government Code.

Reference: Sections 11092, 11092.5, 11139.6, 12940-12951, 18500(c)(5), 19700-19706, and 19790-19799, Government Code; Title VII of the Civil Rights Act of 1964, 42 USC, Sections 2000e-2 et seq.; Americans with Disabilities Act of 1990, 42 U.S.C. 12211 et seq.

§ 547.80. Definitions.

The following definitions shall be used for ~~work force~~ workforce data collection and evaluation of equal employment opportunity within the state civil service, including those activities related to layoff:

(a) "Class" means a group of similar positions as defined in Government Code Section 18523.

(b) "Diversity" means the variety of job applicants and employees based on differences in their physical, mental, and personal characteristics, opinions, beliefs, culture, and socio-economic status;

(c) "Equal Employment Opportunity" means providing equal access to state jobs, work assignments, training and other employment related opportunities for all qualified job applicants and employees regardless of race, color, ancestry, national origin, sex, marital status, age, religious creed or opinion, political affiliation or opinion, sexual orientation, medical condition, or mental or physical disability by making employment decisions solely on the basis of job-related criteria.

~~(b)(d)~~ (d) "Racial/Ethnic Group" includes persons who are members of one of the following groups of people: American Indian/Native American, Asian, Black/African American, Filipino, Hispanic, Pacific Islander ~~and~~ or White. These groups are defined as follows:

~~(1) "American Indian/Native American" means any person who is a member of an American Indian Tribe or band recognized by the Federal Bureau of Indian Affairs, or~~

has at least one-quarter American Indian blood quantum of tribes indigenous to the United States and Canada.

(1) "American Indian/Native American" means any person whose origin is any of the original peoples of North and South American (including peoples native to Alaska and Central America), and who maintain tribal affiliation or community attachment.

(2) "Asian" means any person whose origin is the Far East, Southeast Asia, or the Indian subcontinent and includes, for example, China, Japan, and Korea.

(3) "Black/African American" means any person whose origin is any of the Black racial groups of Africa.

(4) "Filipino" means any person whose origin is the Philippine Islands.

(5) "Hispanic" means any person whose origin is Mexico, Puerto Rico, Cuba, Spain, or the Spanish-speaking countries of Central or South America. It does not include persons of Portuguese or Brazilian origin, or persons who acquired a Spanish surname.

(6) "Pacific Islander" means any person whose origin is in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

(7) "White" means any person whose origin is ~~Caucasoid~~ any of the original peoples of Europe, the Middle East, or North Africa.

(e) "Gender" means the identity of an individual as a member of either the male sex or the female sex consistent with Government Code Section 12926;

~~(e)(f)~~ "Occupational Group" means a group of jobs or classes that includes the entry-level, other working levels, and supervisory levels within the same general occupational field of work;

(g) "Outreach" means the efforts made to recruit qualified individuals into examinations for state civil service jobs;

~~(d)(h)~~ "Relevant Labor Force" means the pool of individuals who possess the requisite qualifications for the job within the geographic area in which the agency can reasonably expect to recruit;

~~(e)(i)~~ "Statistically Significant" means the degree of underutilization is equal to or greater than the .05 level of significance using the one-tailed Z Test method of statistical analysis outlined in Appendix 4 of the *Interim Guidelines for Conducting the Annual Analysis of the State Work Force Workforce (Guidelines)*, issued March 2002 by the State Personnel Board, as they currently read or as they subsequently may be amended. This document is hereby incorporated by reference in its entirety. Using this methodology, a computed Z value of 1.65 or greater is sufficient to conclude that any underutilization is statistically significant.

~~(f)(j)~~ "Underutilization" means having fewer persons of a particular group in an occupation or at a level in a department than would ~~reasonably~~ be expected by their availability the percentage available in the relevant labor force.

~~(g)(k)~~ "Work Force" "Workforce" means incumbents in full-time and other-than-full-time positions in the state civil service employed by the appointing ~~authority~~ power.

NOTE: Authority cited: Section 18701, Government Code.

Reference: Sections 11092, 11092.5, 18523, 19702.1, 19700-19706, and 19790-19799, ~~19791 and 19792,~~ Government Code; Title VII of the Civil Rights Act of 1964, 42 USC, Sections 2000e-2 et seq.; and "Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity," *Federal Register*, October 30, 1997; *Connerly v.*

State Personnel Bd. (2001) 92 Cal. App. 4th 16; and *Hazelwood School District v. United States* (1977), 433 U.S. 299, 308, fn. 14.

§ 547.801. The Annual Analysis of the State Workforce.

Each appointing power shall annually conduct an analysis of its agency or departmental workforce to determine if there is a statistically significant underutilization of a racial/ethnic or gender group that may indicate employment discrimination. Where statistically significant underutilization of a racial/ethnic or gender group is found, the appointing power shall analyze its employment practices to determine whether the underutilization is, in whole or in part, the result of illegal discrimination. The annual workforce analysis process shall be conducted in accordance with the Guidelines.

NOTE: Authority cited: Section 18701, Government Code.

Reference: Sections 11092, 11092.5, 12944-12951, 19702.1, and 19790-19799, Government Code; Title VII of the Civil Rights Act of 1964, 42 USC, Sections 2000e-2 et seq.; *Wygant v. Jackson Board of Education*, 476 U.S. 267 (1986); *Johnson v. Santa Clara Transportation Agency*, 480 U.S. 616 (1987); *Wards Cove Packing Co. v. Atonio*, 490 U.S. 642 (1989), and *Connerly v. State Personnel Bd.*, 92 Cal. App. 4th 16 (2001).

§547.802. Remedial Action.

Whenever an appointing power identifies an unlawful discriminatory employment barrier causing underutilization of a group, it shall develop and implement a plan of action to correct or remove the barrier. Remedial actions may include, but not be limited to, the following:

- (a) Conducting a job analysis to ensure that the appropriate job-related knowledge, skills, and abilities are being tested;
- (b) Revising a class specification to remove non-job-related qualifications;
- (c) Revising a recruitment plan to modify or expand outreach efforts to ensure equal employment opportunity for all potential qualified applicants;
- (d) Revising or replacing examination material that unlawfully discriminates against a particular group of applicants;
- (e) Validating selection processes to ensure they do not unlawfully discriminate against any group of applicants;
- (f) Ensuring that examinations are administered by trained, technically competent staff;
- (g) Ensuring that non-discrimination policies are in place and that hiring managers and supervisors are aware of and follow them; and
- (h) Providing training to hiring managers and supervisors in diversity awareness and non-discrimination and reasonable accommodation employment law.

NOTE: Authority cited: Section 18701, Government Code.

Reference: Sections 11092, 11092.5, 12940-12951, 19702.1, and 19790-19799, Government Code; Title VII of the Civil Rights Act of 1964, 42 USC, Sections 2000e-2

et seq.; *Wygant v. Jackson Board of Education*, 476 U.S. 267 (1986); *Johnson v. Santa Clara Transportation Agency*, 480 U.S. 616 (1987); *Wards Cove Packing Co. v. Atonio*, 490 U.S. 642 (1989), and *Hazelwood School District v. United States*, 433 U.S. 299 (1977); and *Connerly v. State Personnel Bd*, 92 Cal. App. 4th 16, (2001).

§ 547.803. Reporting and Record Keeping Requirements.

(a) By July 1st of each year, the appointing power shall submit to the board for review and approval a summary of the results of its work force analysis, identifying specific underutilization of racial/ethnic and gender groups in accordance with the Guidelines, a description of efforts to review employment practices, and an action plan for correcting or removing any unlawful employment barriers.

(b) Each appointing power shall maintain all records pertaining to its workforce analysis and action plans for a period of at least three years. Such information is public information, subject to inspection upon request.

NOTE: Authority cited: Section 18701, Government Code.

Reference: Sections 11092, 11092.5, 12940-12951, 19702.1, and 19790-19799, Government Code; Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); *Wygant v. Jackson Board of Education*, 476 U.S. 267 (1986); *Johnson v. Santa Clara Transportation Agency*, 480 U.S. 616 (1987); and *Wards Cove Packing Co. v. Atonio*, 490 U.S. 642 (1989), and *Hazelwood School District v. United States*, 433 U.S. 299 (1977).

TITLE 2. ADMINISTRATION
Division 1. Administrative Personnel
Chapter 1. State Personnel Board
Subchapter 1.7. Equal Employment Opportunity Program

Article 2. Employment Goals for Persons with Disabilities

§ 547.804. Analytical Requirements.

Each appointing power shall annually review its workforce to identify any underutilization of persons with disabilities that may be the result of employment discrimination and the need for establishing or modifying equal employment opportunity goals and timetables. The need for annual employment goals shall be determined as follows:

(a) Each appointing power shall compare the representation of employees with disabilities in its agency or departmental work force with the representation of persons with disabilities in the California civilian labor force, using data compiled by the U.S. Census Bureau or other source deemed appropriate by the board. Where the comparison indicates that agency or department representation is below 80 percent of California civilian labor force representation, there is an underutilization of persons with disabilities.

(b) Where there is an underutilization of persons with disabilities, the appointing power shall conduct a thorough review of its employment practices to determine whether illegal employment discrimination may be contributing to the underutilization. The review shall include, but not be limited to, the following factors:

(1) whether physical or mental requirements in class specifications have been validated;

(2) whether recruitment plans are inclusive and sensitive to the needs of persons with disabilities;

(3) whether entry examinations are nondiscriminatory, with no adverse impact against persons with disabilities as measured in accordance with Section 4 of the Federal Uniform Guidelines on Employees Selection Procedures, as it currently reads or as it may be amended hereafter;

(4) whether the hiring rate for persons with disabilities in entry classes is within 80 percent of their availability on employment lists;

(5) whether the promotional rate for persons with disabilities is within 80 percent of their availability on promotional eligible lists;

(6) whether the agency or department has a disability advisory committee that monitors employment practices and advises the director on issues concerning employees with disabilities;

(7) whether the agency or department has appointed persons with disabilities through the Limited Examination and Appointment Program in the last three years;

(8) whether the agency or department has surveyed its employees within the last five years to update information on the number of employees with disabilities;

(9) whether the agency or department has a written reasonable accommodation policy which has been distributed to its employees;

(10) whether the department or agency has timely responded to the requests for reasonable accommodation that it has received;

(11) whether the department or agency has received adverse decisions from enforcement agencies in discrimination complaints based on disability and appeals from the denial of reasonable accommodation;

(12) whether the agency or department has completed a self evaluation of its employment practices and services to the public and a transition plan for improving accessibility for persons with disabilities as required by Department of Justice Regulations implementing Title II of the Americans with Disabilities Act of 1990.

NOTE: Authority cited: Section 18701, Government Code.

Reference: Sections 12926, 12940, and 19230-19237, Government Code; "Uniform Guidelines on Employee Selection" (1978) [29 CFR 1607-1607.18]; and Federal Public Health and Welfare Code, Title 42, Chapter 126, Sections 12101-12117 (Americans with Disabilities Act of 1990 [ADA]).

§ 547.805. Establishing an Employment Goal and Timetable.

(a) In establishing an employment goal for persons with disabilities, the following definitions apply:

(1) "Goal" means a projected number of appointments determined by an analysis by the appointing power of its deficiencies, the anticipated number of job openings, and the availability of qualified persons with disabilities on employment lists.

(2) "Timetable" means an estimate of the time required to meet a specific goal.

(b) When the representation of persons with disabilities in an agency or department is below 80 percent of civilian labor force representation and the appointing power concludes from its analysis that it has not met all criteria in Section 547.804(b) to eliminate the underutilization of persons with disabilities, the appointing power shall establish an employment goal for persons with disabilities in its department or agency, and develop an action plan and a timetable for achieving the goal. The goal, timetable, and action plan shall be submitted to the board for approval by July 1st each year.

NOTE: Authority cited: Section 18701, Government Code.

Reference: Sections 12926, 12940, and 19230-19237, Government Code; "Uniform Guidelines on Employee Selection" (1978) [29 CFR 1607-1607.18]; and Federal Public Health and Welfare Code, Title 42, Chapter 126, Sections 12101-12117 (Americans with Disabilities Act of 1990 [ADA]).

§ 547.806 Employee Disability Information.

At least once every five years, each appointing power shall conduct a survey to update information on the number of its employees with disabilities. Surveys shall be conducted using the *State Employee Disability Questionnaire* in its current form or as it may be revised hereafter. All disability information shall be gathered from employees on a voluntary basis and submitted to the board in sealed envelopes. Information shall be held strictly confidential and used solely for statistical and research purposes to

monitor and advance equal employment opportunity and nondiscrimination. No survey information on individual employees shall be retained by the appointing power.

NOTE: Authority cited: Section 18701, Government Code.

Reference: Sections 12926, 12926.1, 12940-12951 and 19230-19237, Government Code; and Federal Public Health and Welfare Code, Title 42, Chapter 126, Sections 12101-12117 (Americans with Disabilities Act of 1990 [ADA]).

Division 1. Administrative Personnel
Chapter 1. State Personnel Board
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Article 3. Discrimination Complaint Process

§ 547.807. Non-discrimination Policy Statement.

Each appointing power shall issue to each new employee upon appointment a written policy statement affirming its commitment to equal employment opportunity and non-discriminatory employment. The policy statement shall be reissued to each employee at least every three years thereafter, or continuously posted on the appointing power's Internet Web site.

NOTE: Authority cited: Section 18701, Government Code.

Reference: Sections 12940-12951, and 19700-19706, Government Code.

§ 547.808. Right to File a Discrimination Complaint.

(a) Any state civil service employee or applicant for state civil service employment who believes that he or she has been subjected to unlawful discrimination on the basis of his or her race, color, ancestry, national origin, sex, marital status, age, religious creed or opinion, political affiliation or opinion, sexual orientation, medical condition, or mental or physical disability in an appointment, promotion, transfer, assignment, evaluation, disciplinary action, or other term, condition or privilege in state employment may file a discrimination complaint with the appointing power and may file an appeal with the board from the appointing power's response.

(b) Any state civil service employee or applicant for state civil service employment who believes that he or she has been subjected to illegal retaliation for opposing any practice made an unlawful employment practice or making a charge, testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing before the board may file a discrimination complaint with the appointing power and may file an appeal with the board from the appointing power's response.

(c) A state civil service employee or an applicant for state civil service employment may file an appeal directly with the board without first having to file a discrimination complaint with the appointing power if the employee or applicant can show that filing a discrimination complaint with the appointing power would be futile. Circumstances in which futility can be found include, but are not limited to, those where the remedy sought is outside the authority of the appointing power to grant, and those where the appointing power, or members of his or her executive staff are named in the appeal.

NOTE: Authority cited: Section 18701, Government Code.

Reference: Sections 12940-12951, 18500(c)(5), and 19700-19706, Government Code.

§ 547.809. Appointing Power Discrimination Complaint Process.

Each appointing power shall establish a written internal discrimination complaint process pursuant to which a complainant may file a discrimination complaint. The appointing power's internal discrimination complaint process shall be subject to the review and approval of the Board's Executive Officer when first developed and whenever substantially revised thereafter, and shall:

(a) Provide to every complainant an opportunity to resolve a discrimination complaint with a minimum of formal procedural requirements;

(b) Include the opportunity for the complainant to receive counseling by an individual who is qualified to give counseling in matters pertaining to discrimination;

(c) Include other options for informal resolution including, but not limited to, the opportunity for the complainant to participate in board-sponsored mediation;

(d) Assure that no influence will be used to dissuade a complainant from filing a complaint, no complaint will be suppressed, and no individual will be subject to reprisal for filing a complaint or participating in the complaint process;

(e) Make available to a complainant, upon written request, any statistical or other records that are subject to disclosure under the California Public Records Act, beginning at Government Code Section 6250, or the Information Practices Act, beginning at Civil Code Section 1798. A written request must clearly identify the information sought and the time period for which the information is sought; and

(f) Assure that the complainant's complaint receives timely and full consideration at each level of review, that an investigation into the circumstances surrounding the complaint is performed by qualified and impartial persons, and that the complainant will be informed of appeal rights he or she may possess at each step of the complaint process, including the right of appeal to the Board, or to file a complaint with an appropriate state or federal agency having jurisdiction.

The appointing power shall provide a written copy of its internal discrimination complaint process to all employees when first employed and every three years thereafter, or shall post the process continuously on its Internet Web site.

NOTE: Authority cited: Section 18701, Government Code.

Reference: Sections 19700-19706, Government Code.

§ 547.810 Equal Employment Opportunity Counselors and Investigators.

(a) Each appointing power shall appoint an adequate number of equal employment opportunity counselors and investigators to meet all its legal obligations to counsel, investigate and resolve applicant or employee discrimination complaints in a thorough and timely manner. In determining the number of counselors and investigators needed, the appointing power shall give consideration to the number of its employees, the number and geographic location of its facilities, and its past history of discrimination complaint activity.

(b) Each appointing power shall ensure that all employees assigned to provide discrimination complaint counseling, to investigate alleged acts of discrimination, and to resolve discrimination complaints are adequately trained and qualified to perform these functions. Following initial training, each counselor and investigator shall receive

additional training at least every three years to update his/her knowledge and keep current his/her ability to perform the required duties.

NOTE: Authority cited: Section 18701, Government Code.
Reference: Sections 19700-19706, Government Code.

§ 547.811 Informal Discrimination Complaint Process.

In accordance with Section 547.809, state employees may, on a voluntary basis, meet with an equal employment opportunity counselor informally to discuss and seek assistance in resolving their discrimination concerns. Counselors shall provide employees with information about the discrimination complaint process and options for resolving complaints. In addition, counselors may, with the consent of the employee, attempt to resolve discrimination concerns before the employee files a formal written complaint. Each appointing power shall prominently post, in each departmental facility and on its Internet Web site, the names and telephone numbers of departmental equal employment opportunity counselors.

NOTE: Authority cited: Section 18701, Government Code.
Reference: Sections 19700-19706, Government Code.

§ 547.812 Requirements for Filing a Formal Discrimination Complaint with the Appointing Power.

(a) Contents: Each discrimination complaint filed with the appointing power shall be in writing and shall state, with particularity, the facts upon which the complaint is based. The complaint should include the protected group(s) to which the complainant belongs, the nature of the alleged discriminatory and/or retaliatory action, the names and titles of persons who committed or were involved in the alleged discriminatory and/or retaliatory action, the information that the complainant possesses that shows that the complainant's protected status was a factor in the discriminatory and/or retaliatory action that was taken, and the relief and/or remedy the complainant seeks.

(b) Limitations: The alleged discriminatory and/or retaliatory action upon which the complaint is based must have occurred no more than one year prior to the date that the complaint is filed with the appointing power. This period may be extended by not more than 90 days in those cases where the complainant first obtained knowledge of the facts of the alleged discrimination and/or retaliation after the expiration of the one-year limitation period from the date of its occurrence.

NOTE: Authority cited: Section 18701, Government Code.
Reference: Sections 19700-19706, Government Code.

§ 547.813 Response of the Appointing Power to a Formal Discrimination Complaint.

(a) *Appointing Power's Response:* Within 30 days after the appointing power receives a discrimination complaint, the appointing power shall provide the applicant or employee with a written response. The written response shall include detailed findings of fact that support the appointing power's decision. If the appointing power desires more time to gather additional information and/or participate in board-sponsored mediation before issuing a decision in its written response, the appointing power may request from the applicant or employee an extension of time. The appointing power's response shall inform the applicant or employee of his or her right to file an appeal with the board.

(b) *Applicant's or Employee's Reply:* If an appointing power's response includes a request for an extension of time for responding to a discrimination complaint, the applicant or employee shall reply in writing within 10 days after receipt of the response. If the employee or applicant denies the appointing power's request for an extension of time, the appointing power's response shall be deemed to be a denial of the employee's or applicant's discrimination complaint.

NOTE: Authority cited: Section 18701, Government Code.

Reference: Sections 19700-19706, Government Code.

§ 547.814 Requirements for Filing Discrimination Appeals with the Board.

(a) *Limitations:* Within 30 days after receipt of an appointing power's response to a discrimination complaint, the applicant or the employee may file an appeal with the board. If the appointing power fails to respond in writing within 30 days after receipt of the applicant's or employee's discrimination complaint, the applicant or employee may file an appeal with the board within 30 days after the 30-day response period has expired. If the applicant or employee grants the appointing power an extension of time within which to respond, the applicant or employee may file an appeal with the board within 30 days after the extension period has expired.

(b) *Content:* All appeals filed with the board shall be in writing and shall include a copy of the appellant's discrimination complaint filed with the appointing power, together with a copy of the appointing power's response, if any. If the appointing power did not provide the appellant with a written response within the time periods set forth in Section 547.813, the appellant shall so state in his or her appeal filed with the board. If the appellant did not file a discrimination complaint with his or her appointing power because the appellant believed that it would be futile to have done so, the appellant must include information supporting his or her belief.

(c) *Relief Requested:* The appeal shall specify the relief and/or remedies, including any compensatory damages sought.

(d) *Request to File Charges:* If the appellant seeks to file adverse action charges against any individual respondent, for having engaged in unlawful discrimination, pursuant to the provisions of Government Code Section 19583.5 and Board Rule 51.9, the appeal must state the facts constituting the cause or causes for adverse action in

such detail as is reasonably necessary to enable the individual respondent to prepare a defense thereto. Where it does not appear that the material facts alleged are within the personal knowledge of the appellant, the appellant may be required to present supporting affidavits from persons having actual knowledge of the facts before the board acts upon the request for adverse action. Any failure to comply with the provisions of this section shall constitute a waiver on the part of the appellant to subsequently seek adverse action against any individual respondent for unlawful discrimination.

(e) Review: The board shall review each appeal to determine whether it should be referred to an administrative law judge for evidentiary hearing.

(f) Discovery: If an appeal is referred for evidentiary hearing, the discovery provisions set forth in Sections 57.1-57.3 shall apply.

(g) Affirmative Defenses: Appellants may raise affirmative defenses of discrimination and/or retaliation in appeals from adverse action, rejection during probation, medical termination, demotion, or transfer, and non-punitive termination, demotion, or transfer without first having to file a discrimination and/or retaliation complaint or appeal in accordance with this section.

NOTE: Authority cited: Sections 18701 and 19702(g), Government Code.

Reference: Sections 12940-12951, and 19700-19706, Government Code.

§ 547.815 Quarterly Reporting of Discrimination Complaint Activity.

(a) Each appointing power shall report to the Board, on at least a quarterly basis, the following discrimination complaint activity:

(1) the number of informal discrimination complaints reported to the appointing power;

(2) the number of formal discrimination complaints filed with the appointing power, the Department of Fair Employment and Housing, and/or the U.S. Equal Employment Opportunity Commission;

(3) the number of discrimination complaint grievances filed with the appointing power;

(4) the number of management-initiated discrimination inquiries; and

(5) the number of employment discrimination lawsuits being litigated by the appointing power.

(b) When reporting to the board, the appointing power shall include the following information:

(1) the name of the complainant or grievant;

(2) the job classification and work location of the complainant or grievant;

(3) the protected basis on which the complaint or grievance was based;

(4) the nature of the complaint or grievance (i.e., issue);

(5) the disposition of the complaint or grievance;

(6) the remedy, if any, provided to the complainant or grievant;

(7) the action taken, if any, against any persons found to have engaged in illegal discrimination; and

(8) the amount of staff resources and the costs expended by the appointing power on discrimination complaint and litigation activities, including but not limited to counseling employees, investigating complaints, witness testimony, responding to complaints and appeals, legal preparation and review, legal settlements or court awards, court costs, and attorney fees. The appointing power shall establish tracking systems to compile complete and accurate information.

(c) The board shall annually summarize discrimination complaint information reported by agencies and submit a report to the Legislature in accordance with Government Code § 19702.5(c).

NOTE: Authority cited: Section 18701, Government Code.
Reference: Sections 19700-19706, Government Code.

TITLE 2. ADMINISTRATION
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Subchapter 1.7. Equal Employment Opportunity Program

Article 4. Reasonable Accommodation

§ 547.816. Reasonable Accommodation Policy.

It is the policy of the state to remove artificial employment barriers and to provide reasonable accommodation to facilitate the employment of qualified individuals with disabilities in the state civil service. In accordance with Section 547.817, a qualified applicant or employee with a disability may request from an appointing power a reasonable accommodation in order to complete a selection process or perform the essential functions of a desired or occupied position and may appeal to the board from the appointing power's denial, in whole or in part, of such request or failure to respond in a timely fashion in accordance with the regulations set forth in this article.

NOTE: Authority cited: Section 18701, Government Code.

Reference: Sections 12940-12951, and 19230-19237, Government Code; and Federal Public Health and Welfare Code, Title 42, Chapter 126, Sections 12101-12117 (Americans with Disabilities Act of 1990 [ADA]).

§ 547.817. Reasonable Accommodations Procedures.

Pursuant to Government Code Section 19230, each appointing power shall develop and issue to all new employees upon appointment written procedures for submitting requests for reasonable accommodation, and shall reissue such procedures every three years or post such procedures and updates on a continuous basis on its Internet Web site.

NOTE: Authority cited: Section 18701, Government Code.

Reference: Sections 12940-12951, and 19230-19237, Government Code; and Federal Public Health and Welfare Code, Title 42, Chapter 126, Sections 12101-12117 (Americans with Disabilities Act of 1990 [ADA]).

§ 547.818 Reasonable Accommodation Coordinator.

Each appointing power shall appoint a reasonable accommodation coordinator, who is knowledgeable about the legal requirements of and options for reasonable accommodation, to coordinate the processing and evaluation of employee reasonable accommodation requests. The reasonable accommodation coordinator shall consult with the appointing power's equal employment opportunity officer before a decision on a reasonable accommodation request is issued.

NOTE: Authority cited: Section 18701, Government Code.

Reference: Sections 12940, and 19230-19237, Government Code; and Federal Public Health and Welfare Code, Title 42, Chapter 126, Sections 12101-12117 (Americans with Disabilities Act of 1990 [ADA]).

§ 547.819. The Departmental Reasonable Accommodation Process.

(a) *Request for Reasonable Accommodation:* A qualified applicant or employee with a disability who desires a reasonable accommodation to complete a selection process or perform the essential functions of a position may file a written request with the appointing power. Each request shall:

- (1) explain the reasons for the request;
- (2) state the facts upon which the request is based;
- (3) describe the requested accommodation(s);
- (4) include documentation from a physician or other health care professional to support the request, if available.

(b) *Interactive Process:* Within 7 days after receiving a request for reasonable accommodation, the appointing power shall initiate a good faith interactive process with the applicant or employee. During the interactive process, the appointing power shall at a minimum:

- (1) Discuss the purpose and the essential functions of the particular position involved;
- (2) Consult with the applicant or employee to ascertain the precise job-related functional limitations imposed by the disability and how those limitations could be overcome with a reasonable accommodation;
- (3) In consultation with the applicant or employee, identify potential accommodations and assess the effectiveness each would have in enabling the applicant or employee to complete the selection process or perform the essential functions of the position; and
- (4) Considering the accommodation preferences of the applicant or employee, select and implement a reasonable accommodation that is most appropriate for both the applicant or employee and the appointing power.
- (5) Keep the applicant or employee informed about the status of his or her request until an appropriate accommodation is provided or the request for accommodation is denied.

(c) *Medical and Psychological Inquiries:* During the interactive process, in order to respond to a request for reasonable accommodation, the appointing power may make medical and psychological inquiries and require medical and psychological examinations in accordance with Government Code Section 19253.5(a), the Fair Employment and Housing Act [Government Code § 12940, subsections (e) and (f)] and the Confidentiality of Medical Information Act, Civil Code Section 56 et seq. that are job-related and consistent with business necessity. Failure of the applicant or employee to respond to such inquiries and comply with such examinations on a timely basis may result in the appointing power denying the request for reasonable accommodation.

(d) *Appointing Power's Response:* Within 20 days after the appointing power receives a request for reasonable accommodation, the appointing power shall provide the applicant or employee with a written response. The written response shall include findings of fact that support the appointing power's decision. If the appointing power desires more time to gather additional information, obtain responses to medical or

psychological inquires or examinations, engage in the interactive process, and/or participate in board sponsored mediation before issuing a decision, the appointing power may request from the applicant or employee an extension of time in its written response. The appointing power's response shall inform the applicant or employee of his or her right to file an appeal with the board.

(e) *Applicant's or Employee's Reply*: If an appointing power's response includes a request for an extension of time, the applicant or employee shall reply in writing within 10 days after receipt of the response. If the employee or applicant fails to respond within 10 days or denies the appointing power's request for an extension of time, the appointing power's response shall be deemed to be a denial of the applicant's or employee's request for reasonable accommodation.

NOTE: Authority cited: Section 18701, Government Code.

Reference: Sections 12940-12951, and 19230-19237, Government Code; and Federal Public Health and Welfare Code, Title 42, Chapter 126, Sections 12101-12117 (Americans with Disabilities Act of 1990 [ADA]).

§ 547.8191 Requirements for Filing Reasonable Accommodation Appeals with the Board.

(a) *Limitations*: Within 30 days after receipt of the appointing power's response to a reasonable accommodation request, the applicant or employee may file an appeal with the board. If the appointing power fails to respond in writing within 20 days after receipt of the applicant's or employee's reasonable accommodation request, the applicant or employee may file an appeal with the board within 30 days after the 20-day response period has expired. If the applicant or employee has granted the appointing power an extension of time within which to respond, the applicant or employee may file an appeal with the board within 30 days after the extension period has expired.

(b) *Content*: All appeals filed with the board shall be in writing and shall include a copy of the appellant's request for reasonable accommodation filed with the appointing power, together with a copy of the appointing power's response, if any. If the appointing power did not provide the appellant with a written response to the appellant's reasonable accommodation request, within the time periods set forth in Section 547.817, the appellant shall so state in his or her appeal filed with the board.

(c) *Review*: The board shall review each appeal to determine whether it should be referred to an administrative law judge for evidentiary hearing.

(d) *Discovery*: If an appeal is referred for evidentiary hearing, the discovery provisions set forth in Sections 57.1-57.3 shall apply.

NOTE: Authority cited: Section 18701, Government Code.

Reference: Sections 12940-12951, and 19230-19237, Government Code; and Federal Public Health and Welfare Code, Title 42, Chapter 126, Sections 12101-12117 (Americans with Disabilities Act of 1990 [ADA]).

TITLE 2. ADMINISTRATION
Division 1. Administrative Personnel
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Subchapter 1. General Civil Service Regulations

Article 4. Hearings and Appeals

~~§ 53.2. Reasonable Accommodation Appeals.~~

~~Requests for reasonable accommodation are requests from qualified disabled individuals for accommodation to known physical or mental limitations. These requests may be made concerning securing, retaining or advancing in employment in State service. Appointing authorities shall respond to such requests within 20 days of receipt. Appointing authorities shall respond in writing and inform complainants of their right of appeal to the board, within 30 days of receipt of the department's response. Failure to respond to a request within 20 days shall be deemed a denial of the request by the appointing authority and shall release the complainant to file an appeal directly with the board. Such filing shall be done within 30 days of the exhaustion of the 20-day period.~~

~~NOTE: Authority: Section 18701, Government Code.~~

~~Reference: Sections 12940, 18675, 18952, 19701, 19702, 19230, 19231, Government Code.~~

(Provisions incorporated into proposed new CCR § 547.817)

~~§ 54. Discrimination Complaint Process.~~

~~Any person who believes that he or she has been discriminated against in state employment in violation of part II, chapter 10, article 2 of the Government Code, the Federal Age Discrimination in Employment Act of 1978, or Governor's Executive Order B 54-79, shall have the opportunity to file a complaint with the board. Complaints filed with the board shall follow provisions of article 4 and the specific provisions of Sections 54.1 and 54.2. All issues arising under these regulations, if not resolved under the process prescribed hereunder or by Sections 53.2, shall be decided by the board, if the complainant so requests.~~

~~NOTE: Authority: Section 18701, Government Code.~~

~~Reference: Sections 19700, 19701, 19702, 19702.1, 19702.2, 19702.5, 19703, 19704 and 19705, Government Code.~~

(Provisions incorporated into proposed new CCR § 547.808)

~~§ 54.2 Discrimination Complaint Standards for Appointing Powers.~~

~~Each appointing power discrimination complaint review shall:~~

~~(a) Provide for satisfying the complaint with a minimum of formal procedural requirements, by an organizational level closest to the employee concerned. Such provisions shall include the opportunity for the employee to receive counseling on a confidential basis by an employee who is qualified to give counseling in matters pertaining to discrimination.~~

~~(b) Assure that no influence will be used to dissuade the employee from airing a complaint, that no complaint will be suppressed, nor will an employee be subject to reprisal for voicing a complaint or participating in the complaint procedure.~~

~~(c) Assure that the employee's complaint will receive preferred, timely and full consideration at each level of review, that investigation into the circumstances surrounding the complaint will be performed by qualified and impartial persons, and that the employee will be informed of all rights at each step of the process, including the right of appeal to the board or to file with the appropriate state or federal agency or court having jurisdiction.~~

~~NOTE: Authority: Section 18701, Government Code.~~

~~Reference: Section 18675, Government Code.~~

(Provisions incorporated into proposed new CCR § 547.809)

MEMORANDUM

TO: STATE PERSONNEL BOARD

FROM: KAREN COFFEE, Division Chief
JENNIFER ROCHE, Analyst
Merit Employment and Technical Resources Division

REVIEWED BY: KAREN COFFEE, Division Chief
Merit Employment and Technical Resources Division

SUBJECT: ADOPTION OF PROPOSED RESOLUTION TO ABOLISH 2
ELIGIBLE LISTS CREATED BY THE CALIFORNIA
DEPARTMENT OF CORRECTIONS AND ALLOW
EXISTING APPOINTMENTS TO STAND

REASON FOR HEARING

The California Department of Corrections (CDC) is requesting that two eligible lists created from open examinations given by CDC be abolished even though all persons on the lists have not had 12 months of eligibility as required by statute, and that all existing appointments made from the two lists be allowed to stand. This hearing is to allow the Board to hear comments from interested parties.

BACKGROUND

In 1995, the CDC was mandated by court order to retain sufficient medical staff to provide adequate medical care to inmates. CDC urgently needed to hire a significant number of new doctors and nurses within a short time period to comply with this court order. Accordingly, CDC sought the State Personnel Board's (SPB) approval to temporarily utilize the Experience and Education (E&E) Examination process in order to rapidly fill vacancies in Registered Nurse I, Correctional Facility and the Physician & Surgeon (CF) positions. While use of the E & E process did not strictly meet SPB examining standards in this situation, the SPB approved the request because of the special circumstances involving the court mandate.¹ The SPB gave its approval, however, with the understanding that CDC would utilize the E&E process only for a limited time

¹ An E&E examination consists entirely of ratings of education and experience from the standard employment application. E&E examinations are not able to make fine distinctions between competitors, all competitors who meet the minimum qualifications (MQ) are placed in one of three ranks according to the rating standards established for the examination. SPB policies allow appointing powers to use the E&E process when the following factors apply: 1) the resulting eligibility list will result in 3 ranks, 2) the expected candidate pool is less than 20, 3) the candidate group is small relative to the number of potential appointees, and all or nearly all eligibles are likely to receive employment offers, 4) there are no significant sensitive issues or employee relations concerns and, 4) the availability of alternative selection techniques that can make finer distinctions has been considered.

period and only for a limited number of positions, until it developed a more appropriate method of testing.

SPB staff became aware that CDC was still utilizing the E&E process to fill its Registered Nurse I and Physician and Surgeon positions until the present, and that it had not develop more appropriate examinations for these classes. The result of continued use of the E & E process since 1995 has been that CDC's eligibility lists have grown in size far beyond the 20 names allowed by SPB guidelines, and contain the names of many candidates who are only marginally qualified, resulting in a process which does not meet the requirements of Government Code Section 18930 that examinations for the establishment of eligible lists be competitive and of such character as fairly to test and determine the qualifications, fitness and ability of competitors to actually perform the duties of the class of position for which they seek appointment. In 2002 SPB notified the CDC of the improper use of the E&E process and the necessity of CDC to develop a more appropriate process to assess candidates as soon as possible.

On March 16, 2004 SPB staff sent CDC a memorandum directing CDC to discontinue the use of the E&E exam plan for the medical classifications upon completion of the job analysis and test development for each of the medical classifications. CDC has now completed the job analyses and released new examinations for the Registered Nurse I, (CF) and the Physician and Surgeon (CF) classifications.

SPB staff assisted CDC in developing a supplemental application examination process for both these classifications. The new examination process will screen candidates based upon: 1) their necessary knowledge, skills and abilities that the job analysis identified as essential upon entry into the classification, 2) specialized kinds of medical experience and expertise, 3) and their possession of valid licenses in order to gain entrance to the exam. CDC staff report that the new process is already resulting in qualified applicants and successfully screening out candidates who are not eligible. The new lists, however, will be blocked by the older lists created by the E & E process. Although CDC has begun examining and utilizing the new exams, under the law, CDC cannot hire anyone from the new lists until they have first adequately cleared the old E&E lists. Under the law the old lists, which are blocking hiring from the new lists, must remain in effect for at least one year. CDC has placed candidates on the old list, as recently as May 2004.

CDC is requesting that the SPB abolish the eligibility lists created for the Registered Nurse I (CF) and the Physician and Surgeon (CF) classifications through the E&E process even though some eligibles on the lists will have less than 12 months of eligibility provided for by statute. The SPB has authority to abolish these lists under Government Code Section 18930.5 if it finds that CDC improperly conducted the examinations. Staff support CDC's request. Staff believe that due to CDC's continued utilization of the E & E process far beyond the intent of SPB's original approval of that use, and given that CDC did not develop technically sound alternative examinations on a timely basis, the E & E examinations have been improperly conducted for a number of years. Since the E & E process does not fully and adequately evaluate the qualifications of tested candidates, the lists should be abolished and replaced by the new lists.

Due to the court mandate that CDC must retain adequate medical staff to provide the constitutionally required level of care to inmates, both CDC and SPB staff believe that the appointments that have already been made from the E&E process should be allowed to remain in place.

RECOMMENDATION

That the five-member Board adopt the following resolution abolishing the Registered Nurse I, CF and Physician & Surgeon, CF E&E eligibility lists effective July 7, 2004.

WHEREAS, Article VII, Section 1, subdivision (b) of the California Constitution provides, "In the civil service permanent appointment and promotion shall be made under a general system based on merit ascertained by competitive examination"; and

WHEREAS, Government Code § 18930, in relevant part, provides, "Examinations for the establishment of eligible lists shall be competitive and of such character as fairly to test and determine the qualifications, fitness and ability of competitors actually to perform the duties of the class of position for which they seek appointment...."; and

WHEREAS, Government Code § 18930, in relevant part, provides, "Examinations may be assembled or unassembled, written or oral, or in the form of a demonstration of skill, or any combination of these; and any investigation of character, personality, education and experience and any tests of intelligence, capacity, technical; and

WHEREAS, Government Code § 18930.5, in relevant part, provides, "The board may audit examinations and order corrective action or nullify any examination or parts thereof which have been conducted improperly." And

WHEREAS, in 1995, SPB approved California Department of Corrections (CDC) use of Experience & Education (E&E) exams on a temporary and limited basis, in order to satisfy their urgent need to fill Registered Nurses and Physician & Surgeons in or to comply with the court's mandate to provide constitutionally adequate medical care to inmates; and

WHEREAS, the State Personnel Board's approval for the CDC to utilize the E&E process was temporary until new, more technically sound examinations could be developed that would meet the requirements of G.C. § 18930 to test and determine the qualifications, fitness and ability of the candidates to perform the duties of the class of position for which they seek appointment; and

WHEREAS, the E&E examinations for the CDC's medical classes do not fully assess the competitive qualifications of candidates, have resulted in hundreds of names on the eligibility lists, and do not meet the department's need to identify specialized areas of expertise; and

WHEREAS, the recently developed supplemental application examination process for the Registered Nurse I, (CF) and the Physician and Surgeon, (CF) adequately tests the competitive qualifications of candidates, does successfully screens out unqualified applicants, and does identify candidates with specialized areas of training and expertise; and

WHEREAS, the older E&E eligibility lists will block CDC's ability to utilize y more recent lists produced from the new supplemental application examination; and

WHEREAS, the CDC continues to have difficulties filling their vacant Registered Nurses and Physician & Surgeon positions to meet court mandate; and

WHEREAS, Government Code § 18930.5 states that the Board may audit examinations and order corrective action or nullify any examination or parts thereof which have been conducted improperly; and

WHEREAS, the CDC continued to conduct E & E examinations for the classes of Registered Nurse I (CF) and Physician and Surgeon (CF) far beyond a reasonable period in which it should have developed new more technically sound examinations in accordance with the SPB's original approval for use of the E&E process, and

WHEREAS, the CDC is requesting that the Board abolish the E&E eligibility lists for the Registered Nurses (CF) and Physician & Surgeon (CF) effective July 7, 2004 in order to utilize the newly established lists that are of such character as fairly to test and determine the qualifications, fitness and ability of competitors actually to perform the duties of the class of position for which they seek appointment; and

WHEREAS, the CDC has notified all eligible candidates on the existing E&E lists for the Registered Nurse I (CF) and the Physician and Surgeon (CF) about the newly scheduled examinations and provided them with copies of the new supplemental application examinations and encouraged them to compete; and

WHEREAS, the CDC proposes that all appointments made from the E&E examination process for the Registered Nurse I (CF) and the Physician and Surgeon (CF) be allowed to stand so that medical services to CDC's inmates will not be disrupted, therefore be it

RESOLVED that the Board hereby abolishes CDC's Registered Nurse I, (CF) and Physician and Surgeon, (CF) lists created through the E&E process effective July 7, and be it further

RESOLVED that the Board hereby allows all existing appointments made from the CDC's Registered Nurse I, (CF) and Physician and Surgeon, (CF) lists, created through the E&E process, to stand.

STATE PERSONNEL BOARD

NON-HEARING CALENDAR

RE: BOARD CALENDAR JULY 7, 2004

(Cal. 7/7/04)

MEMO TO: STATE PERSONNEL BOARD

FROM: KAREN COFFEE, Chief, Merit Employment and Technical Resources
Division

SUBJECT: Non-Hearing Calendar Items for Board Action.

Staff have evaluated these items and recommend the following action be taken:

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A. EQUIPMENT ENGINEER

The Department of Transportation (CalTRANS) and DPA propose to establish the deep class of Equipment Engineer and minor revisions to the existing class, Senior Equipment Engineer. The proposed Equipment Engineer classification will have Alternate Ranges A through C, similar to other engineering deep classes in State Services with registration as a mechanical, electrical, civil, agricultural, manufacturing or structural engineering requirement at Range D, and a 12 month probationary period. In addition, CalTRANS proposes to footnote 24 the existing class of Associate. The Senior Equipment Engineer class specification will have minor revisions updating the language utilized in the knowledge and abilities section, and the minimum qualifications will be revised to include the newly established deep class Equipment Engineer.

TO: STATE PERSONNEL BOARD

FROM: BOB MEANS
Personnel Management Analyst
Department of Transportation

REVIEWED BY: JUDY O'DAY, Chief
Division of Human Resources
Department of Transportation

SUMMARY OF ISSUES:

In September, 2002 the Department of Personnel Administration (DPA) and Professional Engineers in California Government (PECG) entered into an agreement for the Department of Transportation (Department) to establish the class of Equipment Engineer. The class is to be established as a deep class, including Alternate Ranges A through D, similar to other engineering deep classes in State service, with registration as a mechanical, electrical, civil, agricultural, manufacturing or structural engineer a requirement at Range D.

CONSULTED WITH:

Al Ramirez, Department of Personnel Administration
Ron Frank, Department of Transportation
Kris Teague, Department of Transportation
Linda McComb, Department of Transportation
Kathy Foley, Department of Transportation

In accordance with the terms of the DPA/Unit 9 contract, the Department has notified the union in writing of this proposal and they are in agreement with it.

CLASSIFICATION CONSIDERATIONS:

Within the Department, the Division of Equipment is responsible for the acquisition, modification, maintenance and disposition of a fleet of autos, trucks and heavy equipment. Engineering positions within the Division are involved with a wide variety of shop, office, and field equipment engineering work in connection with mobile equipment design, fabrication, drafting, specifications and inspections.

The existing journey level class of Associate Equipment Engineer does not require engineering registration. However, over the years more of the staff in the class have obtained their registration as either a civil, electrical or mechanical engineer. Based on a combination of education (college degree in engineering), experience and ability to pass the engineering registration exam, the Division concluded that the most qualified persons to perform journey level equipment engineering work are those who possess engineering registration. In recognition of the establishment of an increased number of engineering deep classes, most especially civil, electrical and mechanical, in areas outside of the Division and in an effort to retain current registered staff, in April, 2001 DPA allowed incumbents in the Associate Equipment Engineer class who were registered professional engineers to be reallocated to the respective engineering deep class represented by their registration, most specifically Transportation Engineer (Civil), Transportation Engineer (Electrical), and Mechanical Engineer, within the Division.

In September, 2002 DPA and PEGC entered into an agreement to establish an Equipment Engineer deep class comparable to other engineering deep classes in State service. This action will eventually result in the use of a single class representing registration needs at the journey level in the Division of Equipment. Employees in the engineering deep classes cited above will be given the option of transferring to the Equipment Engineer deep class at the appropriate salary range. Incumbents in the Associate Equipment Engineer class will remain in that class and the class will be designated Footnote 24 so that no further appointments will be made to the class. As incumbents in that class obtain engineering registration they will be eligible to transfer to the appropriate range in the Equipment Engineer deep class.

The proposed class will have the same classification and salary relationship between the Senior and Supervising level Equipment Engineer classes as other engineering deep classes have to the Senior and Supervising level classes in their respective engineering disciplines.

At the present time the Equipment Division depends on the Mechanical Engineer class for recruitment and hiring purposes. The proposed class will enhance the Divisions ability to recruit and hire engineers with greater potential to perform equipment engineering work.

RECOMMENDATIONS:

1. That the class of Equipment Engineer be established; the proposed Alternate Range Criteria 441 as shown in this calendar be adopted; the proposed specification for the class as shown in this calendar be adopted; the probationary period be 12 months; and a Footnote 24 be assigned to the Associate Equipment Engineer class.
2. That the proposed revised specification for the class of Senior Equipment Engineer as shown in this calendar be adopted.

RESOLUTIONS:

WHEREAS Title 2, California Code of Regulation Section 431 states “Unless otherwise provided by resolution of the Board, the maximum rate of the lowest salary range currently authorized for a class is used to make salary comparisons”; and

WHEREAS alternate ranges within the new class of Equipment Engineer are being established to add a new entry level and to replace the existing class of Associate Equipment Engineer; and

WHEREAS placement in each alternate range of the class of Equipment Engineer represents recognition of a higher level of knowledge, skill, ability, experience or eligibility which each appointee can acquire through experience in the class of Equipment Engineer or comparable or higher level classes; and

WHEREAS as the result of a permanent appointment to each alternate range, an appointee gains status in the range which he/she is appointed as though each range is a separate class by qualifying for placement in that range through transfer, reinstatement, demotion, or satisfying the alternate range criteria: Therefor be it

RESOLVED, That salary ranges A, B, C and D for the class of Equipment Engineer may be used individually as if each represents the salary range of a separate class to make salary comparisons for discretionary actions between the class of Equipment Engineer and other

classes; and be it further

RESOLVED, THAT for the class of Equipment Engineer the maximum currently authorized for Range D of the class shall be the salary range used to make salary comparisons for mandatory actions.

B. CLASSIFICATION CONSIDERATIONS

EQUIPMENT ENGINEER

BACKGROUND

- 1. Provide some historical perspective about the organizational setting of the subject class(es) and the needs that this request addresses.**

The proposed class of Equipment Engineer is used within the Department of Transportation (Department), Division of Equipment. The Division is responsible for the acquisition, modification, maintenance and disposition of a fleet of autos, trucks and heavy equipment.

Professional Engineers in California Government (PECG) and the Department of Personnel Administration (DPA) entered into an agreement for the Department to establish an Equipment Engineer deep class similar to other current engineering deep classes in State service. The new class will serve as a more effective recruitment tool for the Division of Equipment and will aid in the retention of engineers registered in varying engineering disciplines (i.e. civil, mechanical, etc).

CLASSIFICATION CONSIDERATIONS

- 2. What classification (s) does the subject class(es) report to?**

Incumbents in the class of Equipment Engineer report to a Senior Equipment Engineer position.

- 3. Will the subject class(es) supervise? If so, what class?**

No.

- 4. What are the specific duties of the subject class(es)?**

Under direction, incumbents perform a wide variety of office and field equipment engineering work in connection with mobile equipment design, fabrication, drafting, specifications and inspections.

- 5. What is the decision-making responsibility of the subject class(es)?**

Responsible for decisions related to the design, specification and fabrication of mobile equipment owned by the State.

- 6. What would be the consequence of error if incumbents in the subject class(es) did not perform their jobs? (Program problems, lost funding, public safety comprised, etc).**

Errors could affect the safety, integrity or functionality of State owned mobile equipment.

- 7. What are the analytical requirements expected of incumbents in the subject class(es)?**

Required to analyze the structural integrity, performance requirements or buildable costs associated with mobile equipment.

8. What are the purpose, type, and level of contacts incumbents in the subject class(es) make?

May act as a lead-person directing the work of fabricators and mechanics of the State and private industry while investigating and improving the fabrication of mobile equipment
May work with other engineers within the State or private sector to improve the design, and functionality of mobile equipment. May act as expert witness in Board or court actions.

NEED FOR NEW CLASS

9. For new classes only: what existing classes were considered and why were they not appropriate?

There are no existing classes that can meet the requirements of the proposed class.

MINIMUM QUALIFICATIONS

10. What are the proposed or current minimum qualifications of the subject class(es), and why are they appropriate? (Include inside and outside experience patterns).

Proposed minimum qualifications:

Either

Graduation from a four year curriculum in a field related to equipment engineering accredited by the Accreditation Board for Engineering and Technology (ABET). (Registration as a senior in such a curriculum will admit applicants to the examination, but they must produce evidence of graduation before they will be considered eligible for appointment).

Or II

Possession of certification as an engineer-in-training issued by any United States state board of registration offering the National Council of Examiners for Engineering and Surveying (NCEES) exam. (Qualifying college/university education or work experience must be in a field related to equipment engineering).

Proposed Alternate Range Criteria:

Range A. This range shall apply to persons who do not meet the criteria for Range B, Range C, or Range D.

Range B. This range shall apply to persons who have either:

In State service, satisfactorily completed one year of experience performing duties equivalent to a Equipment Engineer, Range A. or

Two years of professional engineering experience outside State service in work primarily involving the use, care, and management of, or the construction and repair of, automotive or heavy construction equipment. and

A bachelors degree in an engineering curriculum related to equipment engineering from a college or university accredited by the Accreditation Board of Engineering Technology. or

One year of professional engineering experience outside State service in work primarily involving the use, care, and management of, or the construction and repair of, automotive or heavy construction equipment. and

A master's or doctorate degree in an engineering curriculum related to equipment engineering from a college or university accredited by the Accreditation Board of Engineering Technology.

Range C: This range shall apply to persons who have either:

In State service, satisfactorily completed two years of experience performing duties equivalent to a Equipment Engineer, Range B. or

Four years of professional engineering experience outside State service in work primarily involving the use, care, and management of, or the construction and repair of, automotive or heavy construction equipment. and

A bachelors degree in an engineering curriculum related to equipment engineering from a college or university accredited by the Accreditation Board of Engineering Technology. or

Two years of professional engineering experience outside State service in work primarily involving the use, care, and management of, or the construction and repair of, automotive or heavy construction equipment. and

A masters or doctorate degree in an engineering curriculum related to equipment engineering from a college or university accredited by the Accreditation Board of Engineering Technology.

Range D: This range shall apply to persons who:

Possess a valid certificate of registration as a mechanical, electrical, civil, agricultural, manufacturing or structural engineer issued by the California Board of Registration for Professional Engineers and Land Surveyors.

In addition, Pattern II of the Minimum Qualifications for the class of Senior Equipment Engineer are being revised to reflect establishment of the Equipment Engineer class:

Two years of experience performing the duties of an Associate Equipment Engineer, Equipment Engineer, Range D, Highway Equipment Superintendent I or II, or Highway Superintendent in the California state , Highway Equipment Superintendent I or II, or Highway Superintendent in the California state service.

PROBATIONARY PERIOD

11. If a probationary period more than six months is proposed, what is the rationale?

Not applicable.

STATUS CONSIDERATIONS**12. What is the impact on current incumbents.**

Incumbents in other engineering deep classes within the Division of Equipment are currently at Range D of those respective classes. They will be given the option to transfer to Range D of the proposed Equipment Engineer class. Incumbents in the Associate Equipment Engineer class will remain in that class and a Footnote 24 will be assigned to the class. As incumbents in that class become registered as a professional engineer, they will be given the option of transferring to Range D of the Equipment Engineer class.

13. Will current employees move by examination, transfer, reallocation, split-off, etc? Explain rationale.

Incumbents currently in other engineering deep classes in Equipment will be given the opportunity to move by transfer to Range D of the Equipment Engineer class. It is proposed that Range D of the class will be at the same salary level as Range D of the current engineering deep classes. The reason for this is to allow current registered staff to maintain their current class/registration identity. A mandatory transfer would not result in the elimination of any existing classes.

CONSULTED WITH**14. In addition to the departmental contacts listed on the cover sheet, list the names and affiliations of persons who were consulted during the development of this proposal.**

None.

CALIFORNIA STATE PERSONNEL BOARD**SPECIFICATION**

Schematic Code: HM25
Class Code: 3639
Established:
Revised: --
Title Changed: --

EQUIPMENT ENGINEERDEFINITION

This is the entry, first working, and journey level of equipment engineering work in the Department of Transportation. Incumbents are assigned duties commensurate with their background, training, and experience. Under direction, incumbents perform a wide variety of shop and field equipment engineering in connection with mobile equipment design, fabrication, drafting specifications and inspection work; may function as a lead person over the activities of other engineering and technician personnel; and do other related work.

TYPICAL TASKS

Performs engineering work in the layout, design, specification, fabrication, and inspection of mechanical, hydraulic, structural, and electrical systems utilized in mobile equipment, vehicles, their subassemblies, and components; prepares designs, detailed drawings, specifications for mechanical, hydraulic, and electrical system designs, frame, and suspensions; checks working drawings; prepares material lists and specifications; establishes performance and operational requirements of equipment; analyzes, selects, and approves materials; confers with contractors regarding compliance with contract specifications and quality of work during fabrication; conducts detailed field inspections and of material, equipment, and fabrication operations; supervises the installation, repair, or improvements of equipment; selects or uses computer based processes to compile engineering and project data; utilizes Computer Aided Design (CAD) and Computer Aided Manufacturing (CAM) processes during the design and fabrication of equipment; utilizes project management concepts to schedule resources and sets milestones for equipment projects; makes field investigations, analyzes equipment failures, and provides corrective actions; provides support to field maintenance operations as required; may act as an expert witnesses in Board or court actions; may lead other engineering and technical personnel; and prepares correspondence and reports.

209MINIMUM QUALIFICATIONSEither I

Graduation from a four-year curriculum in a field related to equipment engineering accredited by the Accreditation Board for Engineering and Technology (ABET). (Registration as a Senior in such a curriculum will admit applicants to the examination, but they must produce evidence of graduation before they will be considered eligible for appointment.)

Or II

Possession of certification as an engineer-in-training issued by any United States state board of registration offering the National Council of Examiners for Engineering and Surveying (NCEES) exam. (Qualifying college/university education or work experience must be in a field related to equipment engineering).

KNOWLEDGE AND ABILITIES

Knowledge of: Engineering fundamentals and mathematics; design and preparing design and layout drawings, written specifications, and estimates for mechanical and electrical systems used in vehicles and their subassemblies, including methods of power transmission, electrical control systems, and hydraulics pertaining to the design of vehicle systems; and various codes, safety orders, and regulations governing the design, operation, and installation of mobile equipment, including electric motors and circuits.

Ability to: Prepare plans, specifications, and estimates for mobile equipment systems; do mechanical design work; make correct computations; make neat and accurate drawings and technical sketches; specify proper equipment materials; accurately interpret drawings and specifications; determine required sizes for various vehicle components; direct or inspect field fabrication by outside vendors or make field inspections and tests of mechanical installations; check drawings and specifications; establish and maintain cooperative relations with those contacted in the course of the work; analyze situations accurately, and adopt and take effective action; prepare correspondence; and make effective oral and written reports.

ccd/sks

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CALIFORNIA STATE PERSONNEL BOARD
SPECIFICATION

Schematic Code: HM20
Class Code: 3635
Established: 11/7/40
Revised: 3/25/65
Title Changed: 11/7/40

SENIOR EQUIPMENT ENGINEER

DEFINITION

Under direction to have charge of varied and difficult engineering work involving supervision of associate engineers and others in the equipment department of the Division of Highways; and to do other related work.

TYPICAL TASKS

Assists in planning and directing the work of the staff of the equipment department engaged in the purchase, inspection, maintenance, repair, and disposal of equipment and equipment parts and the design of new equipment and parts; assists engineers in the districts in determining equipment needs and in selecting appropriate equipment for specific jobs; prepares specifications for the purchase and maintenance of construction and shop equipment; outlines the design or approves designs for special machines or equipment; makes or directs the making of field inspections and makes recommendations on the use and care of equipment; determines retention value or obsolescence of equipment; makes recommendations for and arranges for survey or disposal of equipment; makes occasional inspections of the district shops and makes recommendations as to procedure and equipment; assists in establishing rental rates for equipment to provide for upkeep and replacement; makes recommendations as to suitability of equipment; and prepares reports and dictates correspondence.

MINIMUM QUALIFICATIONS

Experience: Either

1. Two years of engineering experience in work primarily involving the use, care, and management of or the construction and repair of automotive or heavy construction equipment, equivalent in responsibility to that of an Associate Engineer in the California state service. or

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2. Two years of experience performing the duties of an Associate Equipment Engineer, Equipment Engineer, Range D, Highway Equipment Superintendent I or II, or Highway Superintendent in the California state service.

and

Education: Equivalent to graduation from college with major work in engineering. (Additional qualifying experience may be substituted for the required education on a year-for-year basis.)

KNOWLEDGE AND ABILITIES

Knowledge of: Various types, models, capacities, and operative characteristics of heavy construction and maintenance equipment of the type used in highway work; equipment requirements for highway maintenance and construction work; repair and maintenance of such equipment and methods, tools, and materials required in its repair; equipment design; salvage values of worn-out or obsolete equipment; principles and techniques of personnel management and supervision; ~~department's affirmative action program objectives; a manager's role in the affirmative action program and the processes available to meet affirmative action objectives~~ a manager's/supervisor's responsibility for promoting equal opportunity in hiring and employee development and promotion, and for maintaining a work environment that is free of discrimination and harassment.

Ability to: Outline the design of machines or equipment for special use and supervise its construction; determine when equipment should be retired; prepare specifications for highway or shop equipment; estimate and determine equipment requirements for various types of projects, and advise District Engineers on needs, use, and care of equipment; direct the work of others; analyze situations accurately and adopt an effective course of action; dictate correspondence and prepare reports; ~~effectively contribute to the department's affirmative action objectives~~ effectively promote equal opportunity in employment and maintain a work environment that is free of discrimination and harassment.

SPECIAL PERSONAL CHARACTERISTICS

Demonstrated supervisory ability and tact.

ALTERNATE RANGE CRITERIA 441

Range A. This range shall apply to persons who do not meet the criteria for Range B, Range C, or Range D.

Range B. This range shall apply to persons who have either:

1. In State service, satisfactorily completed one year of experience performing duties equivalent to a Equipment Engineer, Range A. or
2. Two years of professional engineering experience outside State service in work primarily involving the use, care, and management of, or the construction and repair of, automotive or heavy construction equipment. and

A bachelor's degree in an engineering curriculum related to equipment engineering from a college or university accredited by the Accreditation Board of Engineering Technology. or
3. One year of professional engineering experience outside State service in work primarily involving the use, care, and management of , or the construction and repair of, automotive or heavy construction equipment. and

A master's or doctorate degree in an engineering curriculum related to equipment engineering from a college or university accredited by the Accreditation Board of Engineering Technology.

Range C. This range shall apply to persons who have either:

1. In State service, satisfactorily completed two years of experience performing duties equivalent to a Equipment Engineer, Range B. or
2. Three years of professional engineering experience outside State service in work primarily involving the use, care, and management of, or the construction and repair of, automotive or heavy construction equipment. and

A bachelor's degree in an engineering curriculum related to equipment engineering from a college or university accredited by the Accreditation Board of Engineering Technology. or
3. Two years of professional engineering experience outside State service in work primarily involving the use, care, and management of, or the construction and repair of, automotive or heavy construction equipment. and

A master's or doctorate degree in an engineering curriculum related to equipment engineering from a college or university accredited by the Accreditation Board of Engineering Technology.

Range D. This range shall apply to persons who:

Possess a valid certificate of registration as a mechanical, electrical, civil, agricultural, manufacturing or structural engineer issued by the California Board of Registration for

Professional Engineers and Land Surveyors.

NOTE: "Professional engineering experience" for the purpose of Alternate Range Criteria 441 is defined as actual work experience gained after graduation from a four-year college or university with a degree in an engineering curriculum.

When the requirements for the particular criteria are met and upon recommendation of the appointing power, the employee shall receive a rate under the provisions of DPA Rule 599.676 except that upon movement from Range C to Range D, the provisions of DPA Rule 599.674 shall apply.